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IN THE SUPREME COURT OF THE STATE OF IDAHO

THE STATE OF IDAHO,	)	Supreme Court No. _____
	)	
Plaintiff-Respondent,	)	
	)	
vs	)	COURT REPORTER'S TRANSCRIPT
	)	
THOMAS EUGENE CREECH,	)	
	)	
Defendant-Appellant.	)	

BEFORE  
HONORABLE J. RAY DURTSCHI  
DISTRICT JUDGE

APPEAL from the District Court of the First  
Judicial District of the State of Idaho, in and for the  
County of Shoshone.

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A P P E A R A N C E S

WAYNE KIDWELL, Esq. Attorney General of the State of  
Idaho, Capitol Building, Boise, Idaho, for and on behalf of  
the plaintiff-respondent.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa,  
Idaho, appearing for and on behalf of the defendant-appellant.

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO, ) Cr. No. 2165  
 )  
 Plaintiff, )  
 )  
 vs ) REPORTER'S TRANSCRIPT  
 )  
 THOMAS EUGENE CREECH, )  
 )  
 Defendant. )

BEFORE

HONORABLE J. RAY DURTSCHI

DISTRICT JUDGE

BE IT REMEMBERED, That the above-entitled matter came on for hearing and trial before the Honorable J. Ray Durtschi, District Judge, with a jury, at Cascade, Idaho, May 20, 1975 through May 22, 1975, and at Wallace, Idaho, October 6, 1975 through October 22, 1975.

A P P E A R A N C E S

ROBERT REMAKLUS, Esq., Prosecuting Attorney, Cascade, Idaho, and  
LYNN THOMAS, Esq., Deputy Attorney General, Statehouse, Boise,  
Idaho, appearing for and on behalf of the plaintiff.

BRUCE O. ROBINSON, Esq., Post Office Box 8, Nampa, Idaho,  
appearing for and on behalf of the defendant, and

WARD HOWER, Esq., Post Office Box 799, Cascade, Idaho,  
appearing for and on behalf of the defendant.

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IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

THE STATE OF IDAHO,	)	Cr. No. 2165
	)	
Plaintiff-Respondent,	)	
	)	LODGMET OF COURT
vs	)	REPORTER'S TRANSCRIPT
	)	ON APPEAL
THOMAS EUGENE CREECH,	)	
	)	
Defendant-Appellant.	)	

---

RECEIVED from John W. Gambee, Official Court Reporter  
of the above-entitled court, and lodged with me this \_\_\_\_ day  
of \_\_\_\_\_, 1976, original plus \_\_\_\_\_ copies of  
the Court Reporter's Transcript on Appeal.

CLERK OF THE DISTRICT COURT

\_\_\_\_\_  
Deputy

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36		The Court	1483

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5		Mr. Robinson	1575
6	HORINE, HAROLD J.		
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7		Mr. Thomas	1196
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8	HULL, MARJORIE K.		
9		The Court	924
10	JACOBS, WAYNE L.		
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17	JAMESON, BONNIE E.		
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19	McARTHUR, WILLIAM L.	The Court	1290
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21		Mr. Remaklus	1429
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11	SORENSEN, ARLENE C.		
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19	THATCHER, BETTY J.		
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21		Mr. Thomas	1522
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8 BRADLEY, ANN Mr. Remaklus Direct 1895  
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9 Mr. Remaklus Redirect 1905  
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11 CRUM, RICHARD A. Mr. Remaklus Direct 1745  
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12 Mr. Remaklus Redirect 1765

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13 FLETCHER, GERALDINE Mr. Remaklus Direct 1732  
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16 FREEMAN, JACK Mr. Remaklus Direct 2012  
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18		Mr. Robinson	Cross	2007
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20		Mr. Thomas	Fur. VD	2195
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22		Mr. Robinson	Fur. VD	2212
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9		Mr. Robinson	Cross 1845
10		Mr. Robinson	Voir Dire 1852
11		Mr. Robinson	X. contd. 1857
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13		Mr. Robinson	Recross 1860
14	SCHREIBER, WILLIAM	Mr. Remaklus	Direct 2168
15		Mr. Robinson	Cross 2175
16	SCOTT, DELBERT E.	Mr. Thomas	Direct 1804
17		Mr. Robinson	Cross 1818
18		Mr. Thomas	Redirect 1827
19	SPAULDING, CAROL MARIE	Mr. Remaklus	Direct 1908
20		Mr. Remaklus	Direct 2330
21		Mr. Robinson	Cross 2353
22		Mr. Remaklus	Redirect 2393
23		Mr. Robinson	Recross 2393
24		Mr. Remaklus	Fur. ReDi. 2396
25	STEWART, JOHN	Mr. Remaklus	Direct 1887
		Mr. Robinson	Cross 1893
		Mr. Remaklus	Redirect 1894
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		Mr. Robinson	Cross 1800
	WOODALL, WESLIE	Mr. Remaklus	Direct 2050
		Mr. Remaklus	Di. contd. 2080
		Mr. Remaklus	Di. contd. 2114
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	Mr. Thomas Redirect	2949
	Mr. Robinson Recross	2950
SCHREIBER, WILLIAM	Mr. Remaklus Direct	2907
	Mr. Robinson Cross	2910
SMITH, CHARLOTTE	Mr. Remaklus Direct	2912
SPAULDING, KATHY	Mr. Remaklus Direct	2896
	Mr. Robinson Cross	2899
TRELEAVEN, JOSEPH HERBERT	Mr. Remaklus Direct	2916
	Mr. Robinson Cross	2923
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HEYREND, F. LaMARR	Mr. Robinson Exam.	2835
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<u>SURREBUTTAL WITNESS BY DEFENSE:</u>		
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3	<u>EXAMINATION OF BAILIFFS:</u>	<u>Examination by:</u>	<u>Page</u>
4	ARMBRUSTER, RALPH	The Court	3008
5		Mr. Thomas	3013
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10    WITNESSES CALLED RE SENTENCING:

11	ESTESS, MICHAEL EGLING	Mr. Robinson	3126
12	HUMISTON, CARL	Mr. Robinson	3113

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E X H I B I T S

HEARING ON MOTION TO SUPPRESS, October 3, 1975, Wallace, Idaho.

STATE'S EXHIBIT NO.

MARKED OFFERED ADMITTED

✓ 1.	Poem.	738	739	739
✓ 2.	Notification of Rights form.	770	774	774

DEPENDANT'S EXHIBIT NO.

✓ A.	Handwriting Exemplar of Thomas Eugene Creech.	718	837	838
✓ B.	(Also State's 56) Purported Statement of Creech dated November 8, 1974.	720	837	838
✓ C.	(Also Def. H) Officer William Hill's report.	837	838	838
✓ D.	Detective Jack Freeman's report.	837	838	838

VOIR DIRE EXAMINATION, Wallace, Idaho, October 6, 1975.

DEPENDANT'S EXHIBIT NO.

✓ E.	North Idaho Press, October 3, 1975.	870	871	871
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WALLACE, IDAHO, TRIAL EXHIBITS (\* indicates previously marked)

STATE'S EXHIBIT NO.

✓ 1-A	Photograph	*	1610	1610
✓ 1-B	Photograph	*	1611	1612
✓ 1-C	Photograph	*	1608	1608
✓ 1-G	Photograph	*	1609	1609
✓ 1-J	Photograph	*	1607	1607

✓ 1-K Photo

1     I N D E X (Continued)

2

3     STATE'S EXHIBIT NO. (Continued)

Marked Offered Admitted

4	<del>1-L</del> Photograph	*	1636	1636
5	<del>1-M</del> Photograph	*	1637	1637
6	<del>3.</del> Diagram of scene.	1715	1716	1716
7	<del>3-A</del> Large diagram of scene.	1631	1632	1632
8	<del>4.</del> Sleeping bag.	*	1614	1614
9	<del>5.</del> Blanket.	*	1615	1615
10	<del>6.</del> Piece of asphalt.	*	1642	-
11	<del>7.</del> Dome light fragments.	*	1661	1661
12	<del>10.</del> (Q-4) Bullet.	*	2119	2120
13	<del>11.</del> (Q-1) Bullet.	*	2119	2120
14	<del>12.</del> (Q-2) Bullet.	*	2119	2120
15	<del>13.</del> (Q-3) Bullet.	*	2119	2120
16	<del>17.</del> Portion of investigative file.	*	1722	-
17	<del>18.</del> Portion of investigative file.	*	1722	-
18	<del>22.</del> (K-1) .22 caliber automatic pistol.	*	2120	2120
19	<del>23.</del> Holster.	*	2120	2120
20	<del>24.</del> ((Q-17) Blue maxi coat.	*	2121	2121
21	<del>25.</del> Purse and contents.	*	2121	2121
22	<del>25-A</del> .22 caliber rifle shells.	*	2121	2121
23	<del>26.</del> .22 caliber rifle shells.	*	2122	2122
24	<del>27.</del> Papers found in 1956 Buick.	*	1647	1647
25	<del>27-A</del> Letter, Wayne to Joyce.	*	1698	1698

1 I N D E X (Continued)

2

3 STATE'S EXHIBIT NO. (Continued)

Marked Offered Admitted

4	✓ 28-A	Photograph	*	-	1645
5	✓ 28-B	Photograph	*	1657	1657
6	✓ 28-C	Photograph	*	1657	1657
7	✓ 28-D	Photograph	*	1657	1657
8	✓ 28-E	Photograph	*	1657	1657
9	✓ 28-F	Photograph	*	1657	1657
10	✓ 28-G	Photograph	*	1655	1656
11	✓ 29-A	Photograph	*	1654	1654
12	✓ 29-B	Photograph	*	1654	1654
13	✓ 29-C	Photograph	*	1654	1654
14	✓ 29-D	Photograph	*	1654	1654
15	✓ 30.	Dome light.	*	1661	1661
16	✓ 41.	(Q-7 through Q-16) envelope containing ten .22 shells.	*	2122	2122
17	✓ 42.	Photograph	1658	1736 2122	- -
18					
19	✓ 43.	Photograph.	1658	1736 2122	- -
20					
21	✓ 44.	Photograph.	1658	1736 2122	- -
22	✓ 45.	Photograph.	1658	1736 2122	- -
23					
24	✓ 46.	(Q-5) .22 caliber shell casing.	1658	2122	2122
25	✓ 47.	Bag containing numerous items. Trial Exhibit Nos. 32-40, Q-25 - Q-33 (Q-17 - Q-49 stipulated as part of Exhibit 47 on Page 2125)	1674	1674 2133	1674 2133

1 I N D E X (Continued)

3	STATE'S EXHIBIT NO. (Continued)	Marked	Offered	Admitted
4	✓ 48. (Q-6) .22 caliber shell casing.	1694	2124	2124
5	✓ 49. Entire tape recorded conversation,			
6	Palmer-Creech.	1712		1713
7			2855	-
8	✓ 49-A Excerpt of tape recording.	2956	2956	2960
9	✓ 50. Copy of notes of Hodge.	1782	1782	1782
10	✓ 51. Blood sample.	1834	1834	1834
11	✓ 52. Blood sample.	1834	1834	1834
12	✓ 53. Dark brown shiny, solid material.	1899	1899	1900
13	✓ 53-A Evidence envelope.	1904	1903	1904
14	✓ 54. Piece of cardboard.	1900	1902	1902
15	✓ 54-A Evidence envelope.	1904	1903	1904
16	✓ 55. Notification of Rights & Waiver.	1945	2096	2097
17			2562	2563
18	✓ 56. Creech Voluntary Statement.			
19	November 8, 1974.	1945	2103	2105
20			2562	2563
21	✓ 57. Notification of Rights, Turner.	2002	2003	2003
22	✓ 58. Inventory of Detective Freeman.	2024	2024	2024
23	✓ 59. Copy of Miranda Warning.	2114	2116	2116
24	✓ 60. Copy of FBI report.	2124	2124	2124
25	✓ 61. Letter, Creech-Palmer, 6-9-75.	2197	2199	2199
				2290
	✓ 62. Envelope. (not marked)	2198	2199	2199
				2290

1 I N D E X (Continued)

2

3 STATE'S EXHIBIT NO. (Continued)

	<u>Marked</u>	<u>Offered</u>	<u>Admitted</u>
4 63. Edited tape.	2277	2277	2278
5 64. Tape recorder.	2277	2277	2278
6 <del>65.</del> Handwritten statement of Creech.	2601	2601	2602
7 <del>66.</del> Photograph.	2617	2618	2618
8 <del>67.</del> Photocopy of letter, Creech-Plowman.	2620	2621	2621
9 <del>68.</del> Poem.	2643	2644	2644
10 <del>69.</del> Letter, Creech-Hilby.	2645	2645	2645
11 <del>70.</del> Dr. Estess' report (Submitted by Court).	2895	2895	2895

13 FBI LABORATORY "Q" EXHIBITS:

- 14 ~~Q-17~~ Maxi coat - Spaulding
- 15 Q-18 Trousers - Spaulding
- 16 Q-19 Sock - Spaulding
- 17 Q-20 Sock - Spaulding
- 18 Q-21 Blouse - Spaulding
- 19 Q-22 Pants - Spaulding
- 20 ~~Q-23~~ Shoe - Spaulding
- 21 Q-24 Shoe - Spaulding
- 22 Q-25 Trousers - Creech
- 23 Q-26 Shoe - Creech
- 24 Q-27 Shoe - Creech
- 25 Q-28 Shirt - Creech

1 I N D E X (Continued)

2

3 FBI LABORATORY "Q" EXHIBITS:

4 Q-29 Belt - Creech

5 Q-30 Levi jacket - Creech

6 Q-31 Nylon jacket - Creech

7 Q-32 Sock

8 Q-33 Sock

9 Q-34 Trousers

10 Q-35 Shirt

11 Q-36 Shirt - Bradford

12 Q-37 Trousers - Bradford

13 Q-37A Handkerchief - Bradford

14 Q-38 Undershorts - Bradford

15 Q-39 Sock - Bradford

16 Q-40 Sock - Bradford

17 Q-41 Belt - Bradford

18 Q-42 Shirt - Arnold

19 Q-43 Trousers - Arnold

20 Q-44 Undershirt - Arnold

21 Q-45 Undershorts - Arnold

22 Q-46 Sock - Arnold

23 Q-47 Sock - Arnold

24 Q-48 Shoe - Arnold

25 Q-49 Shoe - Arnold

I N D E X (Continued)

<u>DEFENDANT'S EXHIBIT NO.</u>	<u>Marked</u>	<u>Offered</u>	<u>Admitted</u>
A. Portion of investigative file. Bradford Rap Sheet.	1720	1722 2315 2854	- - 2854
B. Portion of investigative file, Arnold Rap Sheet.	1720	1722 2315 2854	- - 2854
C. Copy of Bradford postmortem exam record.	1818	1821	1823
D. Copy of Arnold postmortem exam record.	1818	1825	1825
E. Document re exam record	1818		
F. Beals' report to Scott re specimen Arnold exam.	1835	1836	1836
G. Beals' report to Scott re specimen Bradford exam.	1835	1836	1836

That Plaintiff's Exhibits numbered 1, 1-D, 1-E, 1-F,

EXHIBITS RECEIVED.....BUT NOT MARKED OR NOTED IN TRANSCRIPT

- ✓ State's 1-K - photos See Plaintiff's 1
- ✓ 5 x 7 photo w/cover
- ✓ 2 photos developing envelopes negatives
- ✓ 1 plastic bag containing 5 plastic bags
- ✓ envelope: w/glasses, knife, cigarette, pop can cap, comb,  
money, pipe, red star, match cover, bullets
- ✓ envelope: w/social security card, BSU card, driver license  
card, library-activity card and plastic folder
- ✓ plastic bag: w/weeds
- ✓ plastic bag: w/bloody cigarettes, matches
- ✓ empty plastic bags

That Exhibits 20 and 21 were marked at Cascade, Idaho  
and changed to Defendant's Exhibits A and B and admitted  
into evidence at Wallace, Idaho

1 CASCADE, IDAHO, WEDNESDAY, DECEMBER 4, 1974, 10:00 A.M.

2

3 THE COURT: Mr. Hower, would you like to have a few  
4 minutes to talk with Mr. Creech?

5 MR. HOWER: I believe we are ready to go, Your Honor.

6 THE COURT: You can be seated. Mr. Creech, this is  
7 the District Court of the Fourth Judicial District of State  
8 of Idaho in and for the County of Valley. My name is Judge  
9 Hagan. I am a district judge of this court. Now, you have  
10 been brought before this court to answer to a charge that you  
11 have committed a crime.

12 An Information was filed in this court on this day,  
13 December 4, 1974. And in the Information it is stated that  
14 your true name is Thomas Eugene Creech, also known as Tom  
15 Turner, also known as Joe Carl Adams, also known as Richard  
16 Dennis, Jr. Is Thomas Eugene Creech your true and correct  
17 name?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you want to have these aliases continued  
20 on the Information?

21 MR. REMAKLUS: I do not; if they may be stricken.

22 THE COURT: Since the Defendant has acknowledged  
23 Thomas Eugene Creech is his true and correct name, we will  
24 hereafter carry all proceedings in the name and style of  
25 State of Idaho versus Thomas Eugene Creech.

1 Mr. Creech, the Information really contains two counts.  
2 Count I charges you with the commission of the offense of  
3 Murder In The First Degree, committed here in Valley County  
4 on or about the 4th day of November, 1974, involving the  
5 death of one Edward Thomas Arnold.

6 Count II charges you also with the commission of Murder  
7 In The First Degree, and it also alleges that this offense  
8 was committed on or about the 4th day of November, 1974,  
9 here in Valley County involving the death of one John Wayne  
10 Bradford.

11 The charge of Murder In The First Degree, Mr. Creech,  
12 is a felony, of course, in the State of Idaho; and upon  
13 conviction carries a possible maximum penalty of death. In  
14 fact, under the present law in the State of Idaho upon  
15 conviction of the offense of Murder In The First Degree, death  
16 is the required penalty. Mr. Hower has been appointed your  
17 counsel previously, has he not?

18 THE DEFENDANT: (Whereupon the Defendant nods his head.)

19 THE COURT: All right. At this time then, Mr. Creech,  
20 I will ask the bailiff if there is one present -- if not, I  
21 will ask the Clerk to forward to you your copy of the Infor-  
22 mation. I will ask the Clerk to read the formal information  
23 at length, and you can follow along with your copy.

24 (Whereupon the formal Information was read.)

25 THE COURT: Mr. Creech, do you understand the two

1 charges filed against you?

2 THE DEFENDANT: (The Defendant nods his head.)

3 THE COURT: All right. The next step -- Let me ask  
4 you this: Can you read and write the English language?

5 THE DEFENDANT: (The Defendant nods his head.)

6 THE COURT: You were able to read the Information as  
7 the Clerk was reading it to you?

8 THE DEFENDANT: Yes.

9 THE COURT: The next step in the proceeding then, Mr.  
10 Creech, would be for your entry of a plea to each of the two  
11 charges made against you in this Information. As to each  
12 charge you have the option of entering a plea of guilty or a  
13 plea of not guilty. If you do enter a plea of not guilty,  
14 this particular plea, of course, would require the State to  
15 prove all the elements or allegations in that charge to a  
16 jury beyond a reasonable doubt. You also have the right to  
17 rely upon the defense of mental disease or defect excluding  
18 responsibility under the laws of the State of Idaho. You also  
19 have the right to additional time to consider which plea you  
20 desire to enter. And as to some of your other rights, let  
21 me advise you briefly if you do enter a plea of not guilty and  
22 there is a trial and you are convicted, of course, you would  
23 then have a right to appeal your conviction to the Supreme  
24 Court of the State of Idaho from this court. The time for  
25 taking such appeal is 30 days from the date the judgment is

1 made and entered; and, of course, you would have a right to  
2 have counsel appointed for you at no expense to yourself on  
3 that proceeding as you do have the right here in this  
4 proceeding; you have counsel appointed for you at no expense  
5 since it has been determined you are a needy person by the  
6 magistrate.

7 Do you wish to take additional time? As I said, the  
8 next step in the proceeding would be for entry of your plea  
9 or for your advising the Court of any intention to rely upon  
10 the defense of mental disease or defect. Do you wish to take  
11 additional time?

12 MR. HOWER: Your Honor, at this time with the Court's  
13 leave, the Defendant would require additional time before  
14 entering a plea before you. He would also request the Court's  
15 leave to enter now a notice in giving his intent to rely  
16 upon mental illness or defect excluding responsibility as a  
17 defense.

18 THE COURT: I will consider this formal notice of the  
19 Defendant to rely upon the affirmative defense of mental  
20 disease or defect, and the Clerk will make a minute entry of  
21 that notice. I understand you also wish to follow it up with  
22 a formal written notice for the purpose of the record; is  
23 that true, Mr. Hower?

24 MR. HOWER: I have that in my hand. With the Court's  
25 leave I will hand a copy to the Clerk and a copy to the

1   Prosecutor.

2           THE COURT: All right; you may do so. According to  
3   the statute concerning the defense of mental disease or defect,  
4   the first step in the proceeding would be to appoint a  
5   psychiatrist for the requisite examination. The statute, of  
6   course, provides that the Court can appoint the psychiatrist  
7   or can call upon the Director of the Department of Health and  
8   Welfare of the State of Idaho and ask him to designate a  
9   psychiatrist to conduct the examination. Does either the  
10   State or the Defense have any suggestions?

11          MR. REMAKLUS: I would prefer, Your Honor, that you  
12   make the appointment in order to keep this moving. I see no  
13   reason to involve the department.

14          THE COURT: Do you have any suggestion as to a psy-  
15   chiatrist either one of you if I were --

16          MR. REMAKLUS: Dr. Heyrend, LaMarr Heyrend, I think in  
17   Boise would be satisfactory with me.

18          MR. HOWER: I prefer, Your Honor, the appointment of a  
19   different psychiatrist, not Dr. Heyrend, for the reason that  
20   the Defendant has been under his professional care for the  
21   past two or three weeks; and it seems to me that he would not  
22   start fresh in evaluating the state of his mental health.

23          THE COURT: Okay. I think this might be a question  
24   really as a practical question because it is possible that the  
25   available psychiatrists in this area may already have had some

1 contact. I am going to do probably some investigating, and  
2 I'll really take the matter under advisement to ascertain if  
3 there is a local psychiatrist available. If there is not,  
4 then I will rely upon the statute and request the Department  
5 of Health and Welfare to appoint one.

6 MR. REMAKLUS: May I inquire, Your Honor, as to the  
7 time element involved. I understand it is taking up to 60  
8 days for the examination and the report.

9 THE COURT: That's correct. I don't think it should  
10 take that long. Sixty days was the maximum amount of limits;  
11 and depending, of course, which psychiatrist is chosen, perhaps  
12 we could shorten the time. At any rate, the next step after  
13 the decision of who the examining psychiatrist will be, will  
14 be for the Court, of course, to issue the order directed to  
15 that psychiatrist to conduct the examination and what findings  
16 he is to report back.

17 Let's look at it this way. I am the arraigning judge.  
18 I will not be the judge trying this case. I have not drawn  
19 it. I think my role in this procedure is to make the  
20 determination, which will require some investigation, as to  
21 the appropriate psychiatrist to appoint. This I will do; and,  
22 of course, we will report all matters to both Counsel. And  
23 when that determination has been made, I will issue the order,  
24 the formal order to the psychiatrist under the statute; and  
25 at that time I should be in a position to know when he will be

1 able to conduct his examination and make a report to the  
2 Court in accordance with the statute. However, I do feel  
3 that we ought to perhaps schedule the matter for a date certain;  
4 and I would suggest that we do continue the matter until the  
5 next regular motion day in hopes that the report will be  
6 obtained by that time. If it is not, then, of course, we will  
7 need a further continuance. But if there is no disagreement  
8 with that procedure, I will merely continue the matter for  
9 appearance on the next motion day, which will be January the  
10 11th, I think, or is it the 8th?

11 MR. REMAKLUS: January 8, I think, Your Honor.

12 MR. HOWER: I have no disagreement with the procedure,  
13 Your Honor; but I am reluctant for the appointed psychiatrist  
14 to feel under any time pressure except the 60 days required.  
15 Nothing in the Court's order limiting that time, will there  
16 be?

17 THE COURT: All right; I'll also check into that,  
18 Mr. Hower. And, of course, we will offer him the full 60 days.  
19 If he can do it sooner without feeling any pressure, that  
20 still maintains the January 8 date.

21 MR. HOWER: All right.

22 THE COURT: Okay. All right; I will remand the  
23 Defendant -- If there is nothing further, I will remand the  
24 Defendant back to the custody of the Sheriff of Ada County.  
25 Is he in the custody of the Sheriff of Valley County?

1 MR. REMAKLUS: Well, the custody matter apparently is  
2 a little cloudy, Your Honor. And I haven't had an opportunity  
3 to discuss this with Mr. Hower, but it is my understanding  
4 that Mr. Creech is presently being held at the Idaho State  
5 Prison. An order was entered by the committing magistrate  
6 that he be transferred for safety purposes to the Ada County  
7 Jail. Apparently he was transferred by the Sheriff of Ada  
8 County to the Idaho State Penitentiary.

9 I received a telephone call shortly after 12 noon  
10 today from our Sheriff stating that if he is to be held at  
11 the Idaho State Penitentiary, that they desire to have some  
12 kind of an order of the Court authorizing them to hold him  
13 for us. I am wondering if Mr. Hower would consider entering  
14 into a stipulation that the Court may enter an order that Mr.  
15 Creech be held at the Idaho State Penitentiary pending the  
16 final disposition of this matter.

17 THE COURT: Do you want some time to discuss this?

18 MR. HOWER: With the Court's leave, I would.

19 THE COURT: Okay. We will take a few minutes' recess.

20 (Whereupon a recess was taken.)

21 THE COURT: Have you had an opportunity to discuss the  
22 situation with your client?

23 MR. HOWER: Yes, I have, Your Honor; and I am prepared  
24 to make a motion.

25 THE COURT: All right.

1           MR. HOWER: I wish to move the Court for its order  
2 committing the Defendant to the custody of the Ada County  
3 Sheriff at the Ada County Jail pending a possible further  
4 order of commitment to the State Department of Health and  
5 Welfare for psychiatric evaluation.

6           THE COURT: All right. Do you have any objection to  
7 that?

8           MR. REMAKLUS: None, Your Honor.

9           THE COURT: Okay. That seems to be a reasonable request.  
10 We will officially remand the Defendant to the custody of the  
11 Ada County Sheriff in accordance with the magistrate's previous  
12 order; I mean specifically the Ada County Jail rather than  
13 the Idaho State Penitentiary. And it should be noted that  
14 there is no order outstanding now transferring him to the  
15 custody of the Idaho State Penitentiary, Board of Corrections;  
16 so I think the Ada County Jail is the appropriate place for  
17 holding the Defendant at this stage of the proceedings.

18           Furthermore, in accordance with your motion, Mr. Hower,  
19 I will investigate the possibility of ordering the Defendant  
20 to the custody of the Department of Health and Welfare in line  
21 with the statute and in line with the possibility of the  
22 psychiatric examination being designated -- or the examiner  
23 being designated by the Department of Health and Welfare. We  
24 will look into that as a possibility.

25           MR. HOWER: We thank the Court.

1           THE COURT: All right, Mr. Creech, I will remand you  
2 back to the custody of the Sheriff of Ada County, the previous  
3 designated holding authority for you; and we'll continue the  
4 matter officially until the next motion day in this court,  
5 which will be January the 8th, for further proceedings.

6           Thank you; we will be in recess.

7                           (Whereupon the proceedings were concluded.)  
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1           BOISE, IDAHO, WEDNESDAY, JANUARY 8, 1975, 10:00 A.M.

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4           THE COURT: We'll take up the case of State versus  
5 Creech, Valley County Case No. 2165.

6           The record in the case shows that the defendant  
7 was partially arraigned before Judge Hagan on December 4th in  
8 Valley County and the matter was continued for entry of a plea  
9 to this date at the request of the defendant.

10          I wonder -- understand Counsel are prepared to  
11 stipulate that the arraignment and the pleas could be done  
12 here in Ada County; is that agreeable?

13          MR. REMAKLUS: That's agreeable with the State,  
14 Your Honor.

15          MR. HOWER: Yes, we will so stipulate.

16          THE COURT: Is that agreeable with you, Mr. Creech?  
17 You understand you could be arraigned in Valley County and,  
18 actually, the time would have been 2:00 this afternoon. Are  
19 you willing to be arraigned and enter your pleas here in  
20 Ada County?

21          MR. CREECH: It's all right.

22          THE COURT: I take it you don't object to having it at  
23 this time rather than 2:00 this afternoon?

24          MR. CREECH: No.

25          MR. HOWER: If the Court please, the order, as I recall,

1 was for 3:30 this afternoon.

2 THE COURT: 3:30?

3 MR. REMAKLUS: Yes, it shows on the minute entry.

4 THE COURT: All right, the matter was continued to this  
5 time for entry of pleas to two counts of the Information.

6 Are you prepared to enter your plea at this time?

7 MR. HOWER: Yes, we are, Your Honor.

8 THE COURT: I'll ask the defendant to stand, please.

9 I will ask you how you plead to Count I, Mr. Creech.

10 MR. CREECH: Pardon?

11 THE COURT: How you plead to Count I.

12 MR. CREECH: Not guilty.

13 THE COURT: Enter a plea of not guilty to Count I.

14 I ask you how you plead to Count II.

15 MR. CREECH: Not guilty.

16 THE COURT: You may be seated.

17 All right. Prior to determining a date for trial  
18 of this case, I'm wondering about the examination that's been  
19 ordered. Now, there's no report in the file and I haven't  
20 received one.

21 Have you received one, Mr. Remaklus?

22 MR. REMAKLUS: No, Your Honor.

23 THE COURT: Mr. Hower, have you received any report?

24 MR. HOWER: No, I haven't, Your Honor. I ran into the  
25 psychiatrist on the ski slope about a week ago and he said he

1 was -- he had just received some report from out of state and  
2 he indicated he thought he would be ready to report quite soon  
3 and would not take the entire 60 days, but he has not reported.

4 THE COURT: I note in looking at your Notice of  
5 Intention to rely on the defense of mental disease or defect  
6 that you state only the defense excluding responsibility. I'm  
7 wondering if you feel some question of fitness to proceed that  
8 may arise as a result of the report, Mr. Hower?

9 MR. HOWER: The order will show, Your Honor, that the  
10 examining psychiatrist has been requested to commence on this  
11 point and I have no motion on it until we have his report.

12 My feeling is that at present that this defense  
13 will not be offered, but there will be no delay on this account.

14 THE COURT: So far as you are concerned, it would be  
15 appropriate to go ahead and set it for trial?

16 MR. HOWER: Yes, it is.

17 I would like to inform the Court that if the  
18 defendant is tried, there will, of course, be discovery  
19 proceedings and almost certainly the motions to suppress  
20 evidence to be disposed of before trial.

21 I don't propose to enter these motions, or start  
22 these proceedings, until we have the determination as to whether  
23 the defendant is mentally responsible.

24 THE COURT: How long do you anticipate it will take to  
25 try the case?

1 MR. REMAKLUS: Well, I would think, Your Honor, that if  
2 we could -- if possible, set it to commence on a Tuesday and  
3 reserve the rest of the week, I'm sure that would be adequate.

4 MR. HOWER: Yes.

5 THE COURT: You concur, Mr. Hower?

6 MR. HOWER: Yes, I do, Your Honor.

7 THE COURT: How much time do you want to allow,  
8 Mr. Hower, for your preliminary motions that you might  
9 contemplate before the trial setting?

10 MR. HOWER: I would think, Your Honor, that an  
11 interval in the order of 60 days might well be needed after  
12 the psychiatrist's report.

13 MR. REMAKLUS: What does your calendar look like for  
14 either April 22nd or 29th, Your Honor, probably in there?

15 THE COURT: I can set cases anytime in April. What  
16 other date did you say?

17 MR. REMAKLUS: Well, I was looking at the 22nd or 29th  
18 of April.

19 MR. HOWER: My feeling, Your Honor, is that that might  
20 be a little early because the psychiatrist's report still  
21 has another 30 days, assuming that he does not request any  
22 extension of time. That would bring us to early February and  
23 my session, that would allow 60 days, would bring us into  
24 May, I guess.

25 MR. REMAKLUS: That's where I was looking first. How

1 about -- you think about the latter part of May?

2 MR. HOWER: Yes.

3 MR. REMAKLUS: That's where I was looking first, 27th --  
4 or 20th or 27th; along in there.

5 MR. HOWER: Um-hmm.

6 THE COURT: Well, I will advise you, Mr. Creech, and  
7 in reference to this trial setting, the Information was filed  
8 in the last term of Court, September term. So, actually,  
9 under the Statute you have a right to be tried this term of  
10 Court; unless you waive that. In May we'll be in another  
11 term of Court which will, actually, go by the statutory period  
12 for trying this case.

13 So, I would need to set it in April unless you  
14 are willing to waive your right to a speedy trial and go into  
15 May, Mr. Creech.

16 In other words, I could give you a setting anytime  
17 in April if you wanted it, but, apparently Counsel feel that  
18 that might be a little early to take care of all the matters  
19 we need to take care of before the trial is actually had.

20 You concur in that?

21 MR. CREECH: I waive the right.

22 THE COURT: Okay. Is there a particular reason why  
23 you don't want to start on a Monday, Mr. Remaklus?

24 MR. REMAKLUS: Yeah, we generally have the weekend  
25 accumulation of some, you know, criminal matters on Mondays

1 and this is a personal preference, to get that out of the way  
2 so we're not handling three or four criminal matters and  
3 starting this one on the same day.

4 THE COURT: May 20th, is that an agreeable date, then?

5 MR. HOWER: That is an agreeable date, Your Honor.

6 10:00 a.m.?

7 THE COURT: Ten o'clock and that will be in Valley  
8 County and I'll set it for four days, then, the 20th through  
9 the 23rd.

10 Now, I would like to set a deadline at this time  
11 for filing of preliminary motions so we don't run into any  
12 problem.

13 MR. HOWER: I'm quite agreeable to that, Your Honor,  
14 except I request the Court set the deadline in terms of the  
15 decision by the Court as to whether the defendant will stand  
16 trial as the date from which deadlines are set.

17 The psychiatrist's report, of course, may be  
18 subject to challenge and we don't know how long it might take  
19 to make a determination as to whether the defendant will stand  
20 trial.

21 I see no point in getting involved in motions  
22 to suppress and discovery proceedings unless the defendant is  
23 going to be tried. But, I'm quite agreeable to a cut-off  
24 date from the time of the Court's determination that the  
25 defendant will be ordered to stand trial.

1 THE COURT: Of course, the only date I have to work  
2 from is the trial date and work backwards from that. The  
3 only thing I'm concerned about is having the cut-off date  
4 early enough before trial that the matters can all be  
5 concluded so Counsel know where they are going from the trial  
6 because, obviously --

7 MR. HOWER: As the Court is aware, if we have a  
8 situation where the psychiatrist's report is challenged,  
9 either by the Prosecutor or Defense Counsel, will doubtless  
10 be vacating the trial setting because substantial time that  
11 might be required to resolve that issue.

12 I'd be quite agreeable to a cut-off date which  
13 assumes that the psychiatrist's report will be timely filed  
14 and will be accepted. But, if it isn't, we'll be in a  
15 different ball game.

16 THE COURT: Well, I know much of this is speculative.  
17 As I say, I'm not fixed on any particular date, all I want to  
18 do is allow Counsel enough time following the rulings on  
19 preliminary motions so that the effect of those rulings can  
20 be handled by Counsel prior to trial. And, if you can do  
21 that in one week, as far as I'm concerned, I can set the  
22 cut-off date a week before. That might not allow you enough  
23 time.

24 If you want, say, the latter part of April,  
25 perhaps we could set the cut-off date for filing preliminary

1 motions in the latter part of April and then, actually, have  
2 the hearings on those motions --

3 MR. REMAKLUS: On the May motion day? That's what I  
4 had in mind.

5 MR. HOWER: I'd be agreeable to that, Your Honor.

6 MR. REMAKLUS: Our motion day is going to be May 7th;  
7 isn't it?

8 THE COURT: Right, May 7th.

9 MR. REMAKLUS: We're getting ready for trials at that  
10 same time too. If we can cut it off April 30th, Your Honor --

11 THE COURT: Is that agreeable, Mr. Hower?

12 MR. HOWER: Yes, it is.

13 THE COURT: All right, April 30th time limit for  
14 filing all preliminary motions and, then, any hearings on  
15 those motions will be held on May 7th at the regular motion  
16 calendar in Valley County.

17 I take it there's no problem about the place of  
18 custody of the defendant? He may be remanded to the custody  
19 of the Ada County Sheriff, is that right?

20 MR. REMAKLUS: Yes.

21 MR. HOWER: Yes, sir.

22 THE COURT: All right, Mr. Creech, then, the case has  
23 been set for jury trial to commence on May 20th at 10:00 and  
24 you will be remanded to the custody of the Ada County  
25 Sheriff until that date, or further order of the Court.

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MR. REMAKLUS: Thank you, Your Honor.

THE COURT: We will be in recess.

(Whereupon the matter was continued.)

1 CASCADE, IDAHO, MONDAY, MAY 19, 1975, 4:45 P.M.

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4 THE COURT: I'll take up the matter of State versus  
5 Creech.

6 Mr. Creech, I've had you brought in court at this  
7 time prior to commencement of the trial tomorrow morning to  
8 take up two letters that I received from you. I think I  
9 should take this up in open court rather than communicating  
10 with you on these matters directly out of the presence of  
11 Counsel.

12 I received one letter on March 31 -- or at least  
13 it's dated March 31, 1975.

14 I received a subsequent letter on April 23, 1975;  
15 both of these letters dealt with the subject of obtaining a  
16 new lawyer.

17 I reviewed these letters and the specific  
18 complaints that you -- and I will make them a part of the  
19 court record so they will be part of the official record.  
20 But, as I reviewed, the basic complaint you had concern  
21 about was the lack of visits from Mr. Hower, or frequent  
22 contact with you.

23 I felt that on its face that, in itself, did not  
24 show lack of adequate representation because, at least, it is  
25 apparent to me that I can see where it might be troubling you,

1 but it's apparent to me that a great majority of the preparation  
2 for a trial like this has to be done, of course, in libraries  
3 as far as research and interviewing witnesses, going over  
4 statements and things like that, which couldn't be done in your  
5 presence.

6 So, I felt on their face they did not show any  
7 grounds to appoint new counsel; either for inadequate  
8 representation or incompetence in any respect.

9 But, I will hear anything you want to present in  
10 that regard at this time if you want to present that does, or  
11 that doesn't, appear in these letters.

12 MR. CREECH: I'd like to be appointed a new counsel.  
13 I don't think that -- no offense to Mr. Hower, but I don't  
14 think he's competent to handle this case and I do think that  
15 he's prejudiced against my case.

16 THE COURT: Anything else you want to state as a ground  
17 for that, or basis for those conclusions?

18 MR. CREECH: Just on some talks that we had at the  
19 County Jail in Ada County, couple times he had mentioned  
20 something about him and the Prosecutor getting together on what  
21 was going to happen to me; on whether I was convicted on  
22 first degree or second degree murder.

23 THE COURT: There is a mention of that subject matter in  
24 your March 31st letter concerning -- presenting something to  
25 the legislature; is that what you are talking about?

1 MR. CREECH: Yes.

2 THE COURT: Well, I'll simply advise you in that regard,  
3 Mr. Creech, that of course if you are convicted, the penalty of  
4 anything less than first degree would be fixed by me and the  
5 attorneys, of course, would have an opportunity to present  
6 anything. Mr. Hower would have the opportunity to present  
7 anything in your behalf in mitigation and, of course,  
8 Mr. Remaklus, the Prosecutor, would have an opportunity to  
9 present anything in aggravation, under the Statute.

10 But, the actual decision as to penalty would be  
11 completely up to me and he won't have anything to say about  
12 that ultimate decision. That would be within the discretion  
13 of the Court.

14 Of course, first degree penalty is fixed by the  
15 Statute and, again, they wouldn't have anything to say about  
16 that and, of course, any bills that were presented to the  
17 legislature that were presented, couldn't apply to your case  
18 anyway if they were presented after the case arose.

19 So, there couldn't be -- if such conversation took  
20 place, it couldn't really be any substance to it. So, I don't  
21 feel that would state grounds either.

22 MR. CREECH: So, I don't get a new lawyer?

23 THE COURT: No, I don't feel that grounds have been  
24 shown. I mean, the infrequent visits he made to you, I don't  
25 feel, really, show any inadequacy.

1 MR. CREECH: I haven't even got a copy of my charges.  
2 I don't really even know what I'm really charged with.

3 THE COURT: Well, of course, that was read to you in  
4 open court when you were arraigned.

5 Well, I'll hear anything else you have to present.

6 MR. CREECH: I would like new defense, that's all I've  
7 got to say.

8 THE COURT: Well, I think the record -- your record has  
9 been preserved in that regard because the letters are in the  
10 record and your statements today are in the record.

11 But, I'm going to deny your request at this time  
12 because I don't feel adequate grounds have been shown.

13 We'll be in recess until tomorrow morning at  
14 10:00.

15 MR. REMAKLUS: Your Honor, I have one or two more  
16 points, if we might take them up at this time.

17 THE COURT: All right, be seated.

18 MR. REMAKLUS: Since the court's file has not been made  
19 -- has been in Your Honor's possession in Boise, I wish to  
20 request that if it has been previously been done, that a formal  
21 finding be entered pursuant to Section 18-212, Subsection 1,  
22 Idaho Code; determining that the defendant is fit to proceed  
23 and that he has the capacity to understand the proceedings  
24 against him and to assist in his own defense.

25 As I understand it, Your Honor, since neither the

1 Prosecuting Attorney nor Defense Counsel challenged the  
2 findings of Dr. Estes that this technical finding may be made  
3 based upon his report.

4 THE COURT: Are you referring to the Notice filed  
5 December 4th, 1974, Mr. Remaklus?

6 MR. REMAKLUS: That is the Notice of Intention to rely  
7 upon --

8 THE COURT: Yes, I was wondering if there was more than  
9 that Notice that you were referring to. I want to make sure  
10 we're talking about the same thing.

11 MR. REMAKLUS: Yes, that is my only reference,  
12 Your Honor.

13 THE COURT: As I understand, that Notice, the Notice for  
14 defense to rely upon mental disease or defect excluding  
15 responsibility was not referred to in the question of fitness  
16 to proceed.

17 MR. REMAKLUS: Thank you, Your Honor.

18 THE COURT: I don't see any indication to make the  
19 ruling. You have a say on that, Mr. Hower?

20 MR. HOWER: No.

21 MR. REMAKLUS: One other point, Your Honor. On the  
22 basis of information that I have received, that in the event  
23 that the defendant does take the witness stand to testify on  
24 his own behalf, he has declared his intention to announce to  
25 the jury that he is inadequately represented by Counsel and I

1 would most respectfully request the Court to advise the  
2 defendant that these remarks would not be permitted and I make  
3 this request in the interest of the orderly conduct of the  
4 trial.

5 THE COURT: Well, anything you want to present on that,  
6 Mr. Hower?

7 MR. HOWER: No, Your Honor.

8 THE COURT: Mr. Creech, anything you want to say about  
9 that?

10 MR. CREECH: No.

11 THE COURT: I don't see any indication to admonish the  
12 defendant at this point.

13 MR. REMAKLUS: Fine.

14 THE COURT: All right, we'll be in recess, then.  
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1 CASCADE, IDAHO, TUESDAY, MAY 20, 1975, 10:00 A.M.

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4 THE COURT: This is the time scheduled for the trial  
5 in the case of The State of Idaho versus Thomas Eugene Creech.

6 Is the State ready to proceed?

7 MR. REMAKLUS: The State is ready, Your Honor.

8 THE COURT: Defendant ready?

9 MR. HOWER: Defense is ready, Your Honor.

10 THE COURT: Are you willing to make a motion prior to  
11 bringing in the jury, Mr. Hower? I'll hear your motion at  
12 this time.

13 MR. HOWER: May it please the Court, I observe, sitting  
14 at the table reserved for Counsel, Mr. Thomas who is, I  
15 understand, a member of the Idaho Bar and an Assistant  
16 Attorney General of the State of Idaho.

17 I wish to object at this time, Your Honor, to  
18 any participation in the trial of this case by Mr. Thomas.

19 I cite Idaho Code, Title 31, Chapter 26,  
20 Section 4, which says it is the duty of the Prosecuting  
21 Attorney to prosecute each case in the District Court which  
22 the people or the county or State are a party. This is such a  
23 case.

24 I cite Idaho Code, Title 31, Chapter 26,  
25 Section 3, which sets out procedures by which the

1 Prosecuting Attorney may petition for the appointment of an  
2 Assistant Attorney General to assist him in the trial of a  
3 case and these procedures are initiated by petition. They  
4 include a finding by the Court that there is good cause  
5 therefor and they include a requirement that the Attorney  
6 General must consent.

7 I submit to the Court that not one of these  
8 requirements has been set as of this time and, therefore, I  
9 object to the presence of Mr. Thomas at counsel table and any  
10 participation by him in the trial of the case.

11 I hope the Court and Mr. Thomas will understand  
12 that this is not at all personal, I welcome his presence as  
13 a visitor. I think he certainly is entitled to sit inside the  
14 bar where members of our profession, by courtesy, sit. But,  
15 I think he is not, on the present record, entitled to  
16 participate in the trial of this case.

17 MR. REMAKLUS: Your Honor, I think under Section 31 --  
18 2603, Subsection (b), Idaho Code, that the Prosecutor can  
19 petition the Court to appoint a special assistant and the  
20 Attorney General to assist in the trying of a complicated  
21 lawsuit and this requires the consent of the Attorney General.  
22 This was done by Petition dated May 12, 1975. The Order was  
23 executed by Your Honor and subsequently approved by the  
24 Attorney General of the State of Idaho.

25 In addition thereto, Your Honor, I think that the

1 Attorney General has the inherent power under the Constitution  
2 and Statutes of the State of Idaho to aid and assist any  
3 Prosecutor in a trial of a criminal case.

4 I think the authority of the Attorney General is  
5 far greater than that set forth in the Code section under  
6 which I have petitioned for the order which has been granted  
7 and which has been approved by Mr. Kidwell. Thank you.

8 MR. HOWER: I'm sure the Court is aware that the  
9 Order to which Counsel refers is entirely ex parte. I  
10 represent to the Court that I have had no knowledge of these  
11 proceedings until today.

12 THE COURT: Do you have any citation, Mr. Remaklus,  
13 of a general power of the Court if the Attorney General can  
14 supervise?

15 MR. REMAKLUS: State versus Taylor in 59 Idaho,  
16 Your Honor.

17 I can't remember the citation exactly. That had to  
18 do with where the Attorney General appeared on a Grand Jury  
19 proceeding, I think without invitation and with no notice.

20 THE COURT: Well, I'm inclined to believe, reading the  
21 Statutes involved, that the procedure that Mr. Hower referred  
22 to -- refers to, applies to the appointment of a special  
23 Prosecuting Attorney and not to an Assistant of the Attorney  
24 General.

25 It seems apparent to me that provision providing

1 for the assistance of the Attorney General, of course, could  
2 be granted anytime, even before formal action is filed, even  
3 investigative if they wanted to do so. It obviously could be  
4 ex parte.

5 I'm also inclined to think that under 67-1401,  
6 which specifies the duties of the Attorney General, that he's  
7 authorized, "to repair to any county in the State and assist  
8 the Prosecuting Attorney thereof in the discharge of his  
9 duties."

10 I'm inclined to think that the Attorney General,  
11 if he wished, could appear here and participate in this case  
12 without any leave of the Court.

13 So, I'm going to grant -- or overrule the  
14 objection to Mr. Thomas' appearance here.

15 MR. HOWER: I move the Court for its order appointing  
16 an assistant counsel for the defendant in this case and  
17 postponing the case for 30 days in order to give such counsel  
18 an opportunity to familiarize himself with the facts involved.

19 THE COURT: Mr. Remaklus?

20 MR. REMAKLUS: Your Honor, I would most respectfully  
21 oppose the motion on the grounds that had the Public Defender  
22 wanted counsel, or desired assistant counsel, he had several  
23 months in which to ask for the same and did not choose to do  
24 so.

25 I might add that we -- I don't think that this is

1 prejudicing the rights of the defendant in any way of the  
2 Public Defender considering himself competent to represent him  
3 without the aid of an assistant counsel.

4 I don't see that there is any relationship between  
5 the Attorney General participating, or assisting, and I don't  
6 think we're involved in a, what we used to call "the wager of  
7 law" and, maybe, this would be the "wager of attorneys".

8 But, I don't -- I fail to see how the having of  
9 an Assistant Attorney General seated at counsel table and  
10 participating in this trial has any bearing upon the need of  
11 the defendant to have sought an assistant in preparation of  
12 the case to this point.

13 We have, in addition thereto, Your Honor, we have  
14 witnesses subpoenaed from hundreds and thousands of miles.  
15 We have jurors prepared to go to trial and I don't think that  
16 we are in any way prejudicing the rights of the defendant in  
17 proceeding to trial at this time.

18 THE COURT: Tell me, Mr. Remaklus, what degree of  
19 participation do you anticipate from Mr. Thomas at this time?

20 MR. REMAKLUS: Largely, Your Honor --

21 THE COURT: Just consultation or is he going to  
22 participate in the actual examination of witnesses?

23 MR. REMAKLUS: Well, most of his participation, as I  
24 had anticipated, would be in consultation, technical  
25 assistance during trial and, in view of the fact that I

1 didn't think it was fair to Mr. Thomas to ask him to go to  
2 all of the difficulty and the extra work in assisting me in  
3 the preparation, I thought it only fair to him to permit him  
4 to participate in the questioning of some witnesses and  
5 having a voice in the trial itself.

6 I would state that if it is the desire of the  
7 Court and if it will expedite matters, we could limit  
8 Mr. Thomas' participation to being seated at counsel table  
9 and consultation, technical advice and not engaging in  
10 questioning of witnesses, jurors or engaging in  
11 cross-examination.

12 MR. HOWER: If the Court please. My motion for  
13 counsel is grounded in two facts.

14 One, that I had no notice that there would be an  
15 Assistant Attorney General participating in the trial of this  
16 cause and I think the Statute clearly contemplates that this  
17 shall be a matter of open court proceedings in advance of  
18 trial.

19 Second, Your Honor, I think, in spite of what  
20 Counsel has said, that it is inherently prejudicial when  
21 law requires, and specifies, that the prosecution of criminal  
22 offenses shall be by the Prosecuting Attorney.

23 It's inherently prejudicial for an Assistant  
24 Attorney General to appear in the court and assist in the  
25 prosecution. The message conveyed to the jury is that this

1 is a case in which the State has taken a special interest. I  
2 think the Court would recognize that if the Attorney General  
3 himself were to show up without notice or hearing or any kind of  
4 court procedures to assist in the prosecution of this case, that  
5 no jury could escape noticing that the State attached special  
6 importance to it.

7 If the Attorney General of the United States were  
8 to show up, the situation would be the same, but magnified to  
9 make the point inescapably clear.

10 I think these are matters on which Defense Counsel  
11 should have an opportunity to be heard. I think there must be  
12 a showing of a reason and no reason is stated in the Petition,  
13 no reason -- there is no showing of any kind in the record  
14 which would justify the Court's order stating that good cause  
15 appears therefor; nothing in the record shows that the  
16 Attorney General has consented to this.

17 Now, these go to the actions on which the Court  
18 has already ruled, what we're confronted with now is the  
19 Defense Counsel's motion, confronted with a prejudicial  
20 situation, for an equalizer in the form of two lawyers at this  
21 table. If there are going to be two lawyers with great  
22 prejudice and public status at that table and time to cope with  
23 the added burden to the defense of being confronted with the  
24 prejudice and skills of the Attorney General as well as the  
25 Prosecuting Attorney in defending this case.

1           THE COURT: Well, I think it's obvious that the  
2 Prosecuting Attorney in the State can utilize the office of the  
3 Attorney General without any notice ever being given, without  
4 it ever being a matter of record; simply by asking them to do  
5 briefing for them and research and I think that's a common  
6 practice; without any authorization of anybody, or without it  
7 even being known to the Court or other attorney of the  
8 Attorney General participating. I know they do that, I was in  
9 the Attorney General's Office and did briefing for many  
10 Prosecuting Attorneys without it ever being a matter of record;  
11 even my appearing in the record that that happened. So, I don't  
12 think there's any court control over that degree of participation  
13 by the Attorney General.

14           I'm going to limit, though, I think the point, as  
15 far as surprise and the appearance here, I'm going to limit  
16 Mr. Thomas to consultation which he could do anyway without any  
17 authorization of the Court or anything else. So -- and as an  
18 Officer of the Court he's entitled to sit on this side of the  
19 rail.

20           I'll have you sit just this side of the rail,  
21 Mr. Thomas, but you can be free to consult, as you could  
22 any time that Mr. Remaklus needs.

23           Except for that recommendation, the motion --  
24 objection is denied.

25           MR. REMAKLUS: Do I understand, Your Honor, that

1 Mr. Thomas will not be allowed to stay at counsel table?

2 THE COURT: Yes. No, I suggest he sit behind, just this  
3 side of the rail.

4 MR. REMAKLUS: All right, Your Honor.

5 MR. HOWER: I have no further motions at this time,  
6 Your Honor.

7 THE COURT: I'll have the jury brought over at this time.  
8 We'll have to ask the indulgence of the spectators in the  
9 court, I think we'll have to have every seat to have the jury  
10 panel in and call the roll.

11 I anticipate that once we get through with the  
12 preliminary proceedings as far as calling the roll and swearing  
13 the jury on voir dire and having, perhaps, a voir dire  
14 statement that, again, there will be room in the courtroom for  
15 everybody that wants to come in.

16 But, we're going to have to make room for the jurors  
17 because I've got to get the jury in here to proceed. We've  
18 got enough jurors that there just isn't room in the courtroom  
19 for all of them and the spectators in the seats.

20 So, bring the jury over now, the entire panel.

21 (Brief delay while the jury panel entered the  
22 courtroom.)

23 THE COURT: Mr. Bailiff, during the preliminary  
24 proceedings, why don't you let as many jurors standing as we  
25 can, particularly the ladies, come in and sit in the jury box

1 right now.

2 First order of business will be to call the  
3 roll of the jury panel. I'm going to have the Clerk do that  
4 at this time. If you will answer as your names are called;  
5 please answer either "here" or "present".

6 (Roll call of the jury panel was had.)

7 THE COURT: All right, if the entire jury panel will  
8 now rise, please, and raise your right hand, the Clerk will  
9 swear you for voir dire examination.

10 (Jury panel sworn.)

11 THE COURT: Mr. Remaklus, you may make a voir dire  
12 statement at this time to the entire panel; introducing  
13 counsel.

14 MR. REMAKLUS: Thank you, Your Honor. Mr. Hower, would  
15 you approach the bench with me, please.

16 (Off the record discussion had between Court and  
17 Counsel.)

18 MR. REMAKLUS: If it please the Court, Mr. Hower,  
19 ladies and gentlemen. This is a trial, will be the trial of a  
20 criminal action arising from the discovery of two dead human  
21 bodies near Donnelly, Idaho, on the 5th day of November, 1974.  
22 That was last election day.

23 The subsequent investigation --

24 THE COURT: I don't want an introductory statement, just  
25 the nature of the type of case it is and introduce the counsel.

1 MR. REMAKLUS: All right.

2 Arising out of that incident, ladies and  
3 gentlemen, two counts of Murder in the First Degree were filed  
4 against the defendant, Thomas Creech, and at this time I would  
5 like to introduce my assistant counsel, Lynn Thomas of the  
6 Attorney General's Office, who is here at my invitation as  
7 technical assistant in this case --

8 MR. HOWER: Objection, Your Honor. My understanding is  
9 that Mr. Thomas is not here in that capacity. I would like  
10 for that statement to be corrected and I'd like for the panel  
11 to be cautioned that Mr. Thomas is not here in that capacity.

12 THE COURT: Well, Mr. Thomas is here advising the  
13 Prosecuting Attorney and I think it is proper to introduce him  
14 so if any of the persons know him.

15 MR. HOWER: The record will show that he was  
16 introduced by the Prosecutor as "my assistant in this case."

17 THE COURT: Well, it's in the record, Mr. Hower.

18 MR. HOWER: Yeah.

19 MR. REMAKLUS: Would you stand, please, Mr. Thomas.

20 The defendant is represented by Mr. Ward Hower of  
21 Cascade; the Valley County Public Defender. Seated at his  
22 counsel table is Thomas Eugene Creech.

23 Mary Hill is our Court Clerk, John Gambee is our  
24 Court Reporter and our Bailiff is Mr. Purdy.

25 I believe that covers the court personnel,

1 Your Honor. Thank you very much.

2 THE COURT: I'm required to advise the defendant that if  
3 he wishes to challenge any individual juror he must do so  
4 before the jury is sworn to try the cause.

5 Ladies and gentlemen of the jury panel, I'm going  
6 to give you an admonition a little out of order at this time.  
7 Usually we do this at the first recess, but because in this  
8 case picking of the jury may take considerable time and,  
9 actually, may extend into tomorrow and even though the actual  
10 jury will be -- the trial jury will be sequestered during the  
11 trial -- because of the time that will be involved in picking  
12 the jury I want to give you a preliminary admonition.

13 Number one, I would ask that you not discuss the  
14 case among yourselves at any time during the process of picking  
15 the jury or while you are in recess or over in the VFW Hall  
16 where we will let you relax as we proceed with the picking of  
17 the jury.

18 So, just don't discuss the case among yourselves.  
19 I would admonish you and ask you not to let anyone approach you  
20 and discuss the case with you. In fact, if anyone does  
21 approach you and tries to discuss the case with you, I would  
22 like you to report it immediately to the Court and if you know  
23 the name of the person who approached you, give the Court the  
24 name of that person. If you don't know the name of that  
25 person, inquire and find out what their name is, but I would

1 like you to report immediately to me if anyone tries to  
2 approach you at any time during this trial to discuss the case  
3 with you.

4 If you can't report it to me, I'd ask you to report  
5 it to one of the Bailiffs or Court Officers.

6 Now, if this case goes over until tomorrow as far  
7 as picking of the jury, there may appear in the newspapers or  
8 on radio or television, reports concerning this case tonight or  
9 tomorrow and you may be tempted to read, listen to or watch  
10 them. I would ask you not to do so.

11 Due process of law requires that the evidence to  
12 be considered by you in reaching your verdict meet certain  
13 standards; for example, a witness may testify about events  
14 he himself has seen or heard, but not about matters which he  
15 was told by others. Also witnesses must be sworn to tell the  
16 truth and must be subject to cross-examination.

17 News reports about the case are not subject to the  
18 standards and if you read, listen to or watch these reports,  
19 you may be exposed to misleading or inaccurate information  
20 which unduly favors one side as to which the other side is not  
21 able to respond.

22 In fairness to both sides, therefore, it is  
23 essential that you comply with this instruction.

24 Now, as we proceed with the selection of the jury,  
25 if your name is drawn as a prospective juror, part of the

1 examination as to your qualifications to sit as a trial juror  
2 may take place out of the presence of the remainder of the  
3 jurors. If this happens I would ask you not to discuss those  
4 matters as to which you were examined with the other jurors.  
5 In other words, if you are examined individually out of the  
6 presence of the rest of the panel I would ask you not to  
7 discuss with the remainder of the jurors anything concerning  
8 that examination that takes place out of the presence of the  
9 remainder of the jurors.

10 Now, while part of this examination is going on,  
11 as I say, we're not going to keep those sitting in here all  
12 the time and you will be able to go over to the VFW Hall across  
13 the street, but I would ask you, while you are over there and  
14 at any time that you are involved in this trial, to abide by  
15 this admonition I have given you in its entirety and not  
16 violate any of those things I've asked you to comply with.

17 Now, you've been sworn on voir dire examination  
18 and you've been introduced to the principal parties and  
19 personnel that are involved in the case. So, at this time,  
20 we're going to excuse you temporarily to go back to the  
21 VFW Hall and, as we need you, you will -- the Bailiff will  
22 convey the messages to you what we need done.

23 So, the entire panel may be excused at this time  
24 to return to the VFW Hall.

25 (Entire jury panel left the courtroom.)

1 THE COURT: All right, I want the record to show that  
2 these proceedings are being taken up in the absence of the  
3 jury panel without any of the jury panel being present.

4 I want the record to reflect that the Court has  
5 taken note of certain pretrial publicity that has taken place  
6 in this case. I refer specifically to an article which was  
7 published in the Idaho Statesman on May 18, 1975 in which  
8 matters were brought out that I consider to be highly  
9 prejudicial to the defendant in which, in all probability,  
10 could not be admitted into evidence if offered at the trial.

11 I note that a second article was published in that  
12 same paper, the Idaho Statesman, on May 19, 1975 that also  
13 had matters in it that I consider inappropriate immediately  
14 preceding the commencement of the trial.

15 There was also an article in this morning's  
16 paper, in the same paper, that contained matters that I felt  
17 was suggestive and improper to be brought to the attention of  
18 prospective jury members. The coincidence of these articles  
19 and time of trial almost lead me to believe that those matters  
20 may have been willfully designed to affect the outcome of the  
21 trial and seriously threatens to have that effect.

22 I take note of this for this reason: That under  
23 the American Bar Association Standards for Fair Trial,  
24 particularly those provisions relating to freedom of the press  
25 and fair trial, provide that when this kind of pretrial

1 publicity that is so highly prejudicial has taken place, that  
2 the jurors should be examined as to this matter individually  
3 and out of the presence of the other jurors and that is  
4 stated to be required whenever it is believed to be a  
5 significant possibility that individual jurors will be  
6 ineligible to serve because of exposure to potentially  
7 prejudicial material.

8 I so find, that based upon my own knowledge of  
9 these stories, that that situation exists at this time in this  
10 trial.

11 So, I am, on my own motion -- I will entertain  
12 objection if Counsel don't -- if Counsel object to this  
13 procedure, on my own motion. I have concluded that it is  
14 essential to a fair trial in this case that the jurors be  
15 examined individually, solely with respect to their exposure  
16 to pretrial publicity and that this examination take place out  
17 of the presence of other prospective jurors so that the jurors  
18 who may not have read these reports and may not have been  
19 exposed to them, will not be affected by the recital by other  
20 jurors who have read these stories of what they read and what  
21 was contained in them.

22 I propose to handle this matter in this manner  
23 and with this procedure. As each prospective juror is drawn,  
24 that juror will be examined individually without presence of  
25 the other jurors as to their exposure to pretrial publicity

1 and the effect of that exposure to their qualifications to  
2 sit as a trial juror in this cause.

3 I'm not going to permit Counsel to expand into  
4 other areas. Once we have 12 jurors who have been seated and  
5 passed for cause as to this point, then I'm going to permit  
6 examination of those 12 jurors in order as to other grounds  
7 for challenge for cause in the presence of the rest of the  
8 panel because I feel, to a certain extent, that conserves time  
9 because many of those general questions are appropriate to be  
10 asked in the presence of the entire panel. So that, I think,  
11 sometimes counsel can save time in -- when they get to later  
12 jurors because referring to some of the questioning they've  
13 had earlier jurors and save repetition.

14 So, I will propose to, and as we run into  
15 challenges for cause and if, after the initial examination on  
16 pretrial publicity, and reach pre-emptory challenges, of course,  
17 we'll have to take, again, the examination of those jurors out  
18 of the presence of the other prospective jurors.

19 Now, does either counsel desire to make an  
20 objection for the record to this procedure?

21 MR. REMAKLUS: State has no objection, Your Honor.

22 THE COURT: Mr. Hower?

23 MR. HOWER: I request some clarification if I may,  
24 Your Honor.

25 Is it the intention of the Court to limit the

1 private examination of each prospective juror to questions  
2 pertaining to these three specific articles in the Statesman,  
3 or --

4 THE COURT: All pretrial publicity.

5 MR. HOWER: Fine.

6 THE COURT: I simply made my record on these three  
7 because they were so --

8 MR. HOWER: And does the Court intend to entertain  
9 challenges for cause at the conclusion of that private  
10 examination?

11 THE COURT: In appropriate cases on that point jurors  
12 can be challenged for cause as they are examined.

13 MR. HOWER: Yeah.

14 THE COURT: And, then, of course, as you are permitted  
15 to examine jurors who pass for cause on that point, other  
16 challenges, of course, you can challenge those jurors for  
17 cause on other points as they are examined.

18 MR. HOWER: I have no objection. I request that,  
19 since my conduct of this trial may some day be called in  
20 question, let the record show that I made this request of the  
21 Judge in chambers almost exactly the procedure that the Court  
22 has followed.

23 THE COURT: Yes, the record may so show.

24 All right, I'll direct the Clerk at this time to  
25 draw the first name from the box.

1 THE CLERK: Stephen Thomas.  
2 MR. HOWER: My list shows that Stephen Thomas was not  
3 served, Your Honor.  
4 THE COURT: They won't find him then, will they.  
5 MR. HOWER: Not likely.  
6 THE COURT: All right, draw another name.  
7 THE CLERK: Wray Simmons.  
8 THE COURT: Yes, the Bailiff suggests that, perhaps,  
9 we draw two names at a time and have one held outside the  
10 courtroom so it doesn't take so long to get them over here.  
11 I will ask the Clerk to draw another name.  
12 THE CLERK: Dorothy Basy.  
13 THE COURT: All right, counsel may examine Mr. Simmons  
14 for cause.

15  
16 WRAY SIMMONS,  
17 a prospective juror, having been previously duly sworn, was  
18 examined under voir dire examination as follows:

19  
20 VOIR DIRE EXAMINATION

21 BY MR. REMAKLUS:

22 Q Mr. Simmons, counsel for the defendant and I shall  
23 ask you certain questions at this time touching only upon  
24 pretrial publicity as to whether or not that you have been  
25 exposed to pretrial publicity such as newspaper articles,

1 television broadcasts, news broadcasts and things of that  
2 nature.

3 Now, this examination will be limited strictly to  
4 the pretrial publicity aspect of this matter and as to whether  
5 or not this pretrial publicity has caused you to formulate any  
6 opinions, arrive at a conclusion or be in a frame of mind that  
7 would preclude you from being a fair and impartial juror in  
8 this case.

9 THE WITNESS: Mr. Remaklus, could I ask a question at  
10 this time?

11 MR. REMAKLUS: Your Honor, may the juror ask a question?

12 THE COURT: Yes.

13 THE WITNESS: I wonder if I could be excused from  
14 serving for the reason that I'm moving to Boise within ten days  
15 and this is a plan that is supposed to jell about the first of  
16 the month.

17 Under those circumstances, I wonder if I could be  
18 excused from serving.

19 THE COURT: Let me ask you this question, Mr. Simmons,  
20 in that regard: Do you feel the press of that move that's  
21 upon you right now will distract you from considering this  
22 matter and devoting your attention to it if you are required  
23 to sit here for the balance of the week?

24 THE WITNESS: Perhaps, sir, only to a limited degree  
25 in that regard, but it's my understanding that the trial might

1 last a longer period of time than that and, then, I think it  
2 would work a real hardship.

3 THE COURT: All right, what do counsel want?

4 MR. REMAKLUS: I'd have no objection, Your Honor. We  
5 seem to have many, many jurors.

6 THE COURT: Any objections, Mr. Hower?

7 MR. HOWER: I have no objection, Your Honor.

8 THE COURT: All right, under those circumstances,  
9 Mr. Simmons, we'll excuse you from further -- you are going to  
10 leave the county, as I understand it?

11 THE WITNESS: That's correct.

12 THE COURT: We will excuse you from not only this  
13 jury, but from further service for the jury trial.

14 MR. REMAKLUS: May I request the Court to admonish  
15 Mr. Simmons not to discuss anything that has taken place in  
16 here?

17 THE COURT: Yes. I gave them the general admonition,  
18 please abide by that. Do not discuss at all what you were  
19 asked.

20 THE WITNESS: I understand.

21 THE COURT: You may be excused, then, Mr. Simmons.

22 THE WITNESS: Thank you.  
23  
24  
25

1 DOROTHY M. BASY,  
2 a prospective juror herein, having been duly sworn, took the  
3 stand and testified as follows:

4  
5 THE COURT: Sit on that back row, next to the window.

6 MR. REMAKLUS: What is the name, please.

7 THE COURT: Dorothy Basy.

8 THE CLERK: The next one is Earl Dodds.

9  
10 VOIR DIRE EXAMINATION

11 BY MR. REMAKLUS:

12 Q Mrs. Basy, the purpose of having you in here  
13 individually at the commencement of the questioning is merely  
14 to ask you some questions about pretrial publicity.

15 Now, by that I mean newspaper articles or  
16 television broadcasts, news broadcasts and things of that nature  
17 and the purpose of this is to determine whether or not you have  
18 been subjected to, or are aware of, the pretrial publicity and  
19 whether or not that would cause you to have such a frame of  
20 mind or an opinion that would prevent you from being a fair  
21 and impartial juror in this case.

22 Now, please bear in mind that we're only going to  
23 ask you questions as to the publicity that you may have read  
24 or heard.

25 A. Okay.

1 Q Now, let me begin by asking you if you -- do you  
2 and Mr. Basy subscribe to the Idaho Statesman?  
3 A Yes, we do.  
4 Q Do you read it each day?  
5 A We don't subscribe to it, we have a grocery store  
6 in McCall and --  
7 Q You sell the newspapers there, Mrs. Basy?  
8 A Yes.  
9 Q Are you in the habit of reading the Statesman  
10 each day?  
11 A Occasionally, yes.  
12 Q Have you read articles about this matter?  
13 A A few.  
14 Q Now, how recently, or how long ago have you read  
15 about it?  
16 A It was a long time ago. I just don't read -- I  
17 don't read articles like that.  
18 Q Now, has it been several months ago you would say?  
19 A It's been a long time.  
20 Q Do you have any recollection from any of those  
21 articles that would cause you to have an opinion, or be  
22 prejudiced one way or another in this matter?  
23 A No, sir.  
24 Q Specifically, Mrs. Basy, have you read anything  
25 in the Idaho Daily Statesman that was published Sunday,

1 May 18th -- that would be just the day before yesterday?

2 A. Yes, I did.

3 Q. And what did you read in that particular issue?  
4 Did you read it?

5 A. My main concern was just the trial and the jury;  
6 how they were going to be selected and that was it.

7 Q. Do you have any recollection of that article; as  
8 to whether or not it purported to speak of the facts of this  
9 case?

10 A. No, sir.

11 Q. Do you recollect in that article whether or not  
12 there was anything that would tend to prejudice you one way or  
13 another about the defendant in this matter?

14 A. No, sir.

15 Q. Do you feel that that article, this is Sunday's  
16 paper --

17 A. Um-hmm.

18 Q. -- made any impression on you whatsoever; except  
19 with reference to your sitting, possibly, as a trial juror?

20 A. No, sir, because I don't -- I haven't kept up --  
21 I haven't kept up with the trial, you know, over the time that  
22 they've written it in the papers. I just haven't kept up with  
23 it. I wish I would have.

24 Q. Now, Mrs. Basy, did you read yesterday's Idaho  
25 Daily Statesman?

1 A. No, I didn't.

2 Q. Did you read this morning's paper?

3 A. I didn't have time.

4 Q. Fine. Now, so far as you are concerned, then,

5 newspaper articles have not induced you to have an opinion

6 one way or another in this matter; have they?

7 A. No, sir.

8 Q. Do you folks have a television set?

9 A. Yes, we do.

10 Q. Do you have an opportunity to watch television

11 very much?

12 A. Not very often.

13 Q. Do you customarily watch the news broadcasts?

14 A. Yes, I do -- we try to most of the time.

15 Q. Now, how recently have you watched news

16 broadcasts? I'm speaking of the Boise stations, Mrs. Basy.

17 A. Okay. I believe this morning when I was getting

18 everything organized I overheard that the trial was to be

19 held in Cascade this morning.

20 Q. Did you hear anything else other than that?

21 A. No, because I was busy. I'm a busy person.

22 Q. You work in the store, don't you?

23 A. Yes.

24 Q. And you are active in the management of that, I

25 suppose, seven days a week; are you not?

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A. Yes.

Q Now, directing your attention, say, to yesterday. Did you listen to any television news broadcasts yesterday?

A No. I did listen to the news last night and I believe they had mentioned something about the case on television; that it would take two days to get the jurors selected and this kind of stuff.

Q Was there something to the effect that it was, maybe, the first trial of its kind for several years?

A Right, I remember that.

Q Did that broadcast have any -- purport to speak of any of the facts of the case?

A I don't remember to be honest with you. I've tried not to listen to anything because, if I am selected which, personally, I hope I'm not, I want to be 100 per cent right.

Q Now, let me -- I wish you would search your memory, please, Mrs. Basy. When is the last time, or have you recently heard television broadcasts, news broadcasts over any of the stations that left an impression with you as to the facts of this case; the guilt or innocence or anything about that?

A Nothing to be honest, none.

Q Please?

THE COURT: She said "none".

1 Q BY MR. REMAKLUS: I'm sorry. Thank you,  
2 Mrs. Basy.

3 A But, there's people that have come in the store  
4 and have discussed the case to me; asking me questions how I  
5 felt.

6 MR. REMAKLUS: May we go into this aspect also,  
7 Your Honor?

8 THE COURT: Yes.

9 Q BY MR. REMAKLUS: Now, during the -- of course,  
10 I suppose a lot of people come in the store?

11 A Yes.

12 Q Have you engaged in conversations with people  
13 about this case?

14 A Other than the fact that I wouldn't want to be  
15 a judge of a person, to judge another person that I felt I  
16 wasn't capable of judging another person; other than that.

17 Q Now, during these conversations did any of the  
18 people with whom you may have discussed this, did they  
19 purport to know anything about the facts of the case?

20 A You won't believe the things that people have said,  
21 but that's just, you know, that's just people talking.

22 Q Now, did those observations by your customers  
23 there in the store, did they leave you with any fixed opinion  
24 as to guilt or innocence in this matter?

25 A No, sir.

1           Q     I'm going to ask you a real difficult question,  
2     I won't ask it in terms of how many conversations you may have  
3     had or you may have overheard, but, if you could tell us the  
4     duration of these, for instance, has there been more comments  
5     here in the last several days about this case since it's coming  
6     up to trial?

7           A     I'd say yes. In the last, oh, gosh, when people  
8     started getting summonses, I was summoned a couple of weeks  
9     ago and the first thing they said was, you know, "You are going  
10    to be on the murder trial".

11          Q     Yes.

12          A     And, then, they asked me questions like capital  
13    punishment and questions on, you know, just -- all you have to  
14    do is say this or that and you can get off of it. But, you have  
15    to tell the truth and that's --

16          Q     Yes, that's right.

17                Now, Mrs. Basy, with reference to these  
18    conversations, did you have, say, as late as yesterday?

19          A     Oh, gosh, yes. But, I don't remember what was  
20    said because, when you are in this grocery business people come  
21    in and say all kinds of things and it goes in one ear and out  
22    the other. It has to and I'm sure when they said it, they  
23    were just -- it was conversation that was all.

24          Q     Casual conversation?

25          A     Right.

1 Q Would you tell us a little bit -- may I ask it  
2 this way: In the store do you wait on customers and take cash  
3 and ring up their groceries?

4 A Yes.

5 Q So, you stay busy and --

6 A Right, I try to.

7 Q This is a husband and wife operation; isn't it?

8 A Right.

9 Q And it's at McCall?

10 A Right.

11 Q Now, during the course of a day, then, you may hear  
12 many things that leave no impression upon you?

13 A Yes, um-hmm.

14 Q Do you think, to go back over the last few days,  
15 say, did you work in the store Sunday?

16 A Yes, I did.

17 Q And do you think that you heard, essentially, the  
18 same comments or observations on Sunday as you heard yesterday?

19 A Yes.

20 Q Going back, say, to Saturday, would there be any  
21 difference in what you heard Saturday as there was with Sunday  
22 or Monday?

23 A No, I don't think so. I think it's all just talk.

24 Q Now, Mrs. Basy, has the talk caused you to have  
25 an opinion in this matter one way or the other? I'm not asking

1 if you have an opinion what it is, I'm merely asking do you have  
2 an opinion?

3 A. No, sir.

4 Q. Do you think that if you are finally selected here  
5 as a trial juror that the State of Idaho and Mr. Creech are  
6 going to start out even and that you would hear the evidence  
7 here and base your decision upon the evidence that you would  
8 see here in the courtroom and not on something that you may have  
9 heard, or seen on television or talked about?

10 A. I wouldn't have an opinion, I think.

11 Q. You would not have an opinion now?

12 A. Right.

13 Q. You think if you are finally chosen and you would  
14 make up your mind on the evidence that you would see and hear  
15 right here in this courtroom?

16 A. Yes.

17 MR. REMAKLUS: I'll pass this juror for cause,  
18 Your Honor.

19

20 VOIR DIRE EXAMINATION

21 BY MR. HOWER:

22 Q. Mrs. Basy, I don't mention this as a preliminary  
23 in order to intimidate you, but for your own protection and so  
24 we understand each other. You are aware that you are under oath  
25 at --

1 A. Yes, sir.

2 Q. -- at the present time?

3 A. Yes, sir.

4 Q. All right. Have you ever at any time expressed to  
5 any other person an opinion as to the guilt or innocence of  
6 Thomas Creech?

7 A. No, I haven't. In fact, I think the few people  
8 that I did discuss the case with, or, you know, the things that  
9 were to come, that I honestly felt that I had no opinion. I  
10 wish that I could say that I did, but --

11 Q. I understand that.

12 A. I'm being honest.

13 Q. Mrs. Basy, has your husband ever expressed a  
14 firm opinion?

15 A. No, he hasn't, no.

16 MR. HOWER: I pass this juror for cause, Your Honor.

17 THE WITNESS: Aren't you going to ask me about  
18 capital punishment or anything?

19 THE COURT: We want to take up this one question first  
20 and, then, we'll get -- counsel are going to have a chance to  
21 examine you further.

22 This may change our procedure a little bit, but I  
23 suppose, to conserve time, if counsel may want to ask about  
24 a lot of other things, but we are, right now, trying to limit  
25 it to this one area because we felt there may be some problems

1 in this area.

2 But, let me just ask you, generally, perhaps we  
3 can save time if there's anything in your own mind that you feel  
4 would -- that we should know about right now that would render  
5 you not capable of sitting in as a juror in this case.

6 THE WITNESS: It just -- it's just that it would be  
7 hard for me. I just feel that I'm not capable of judging  
8 another person. I feel that there's a lot of other people that  
9 are stronger.

10 I do believe in capital punishment, but I think  
11 that it would have to take a very strong person to decide that  
12 and I don't know if I would, really, be strong enough to do  
13 that.

14 THE COURT: Counsel want to pursue that question now,  
15 or do you want to wait until later?

16 MR. REMAKLUS: Your Honor, I feel that we probably  
17 had better proceed according to your original format because  
18 if we get off on this, I'm fearful we will be spending hours  
19 on each juror.

20 THE COURT: All right, I'll excuse you at this time to  
21 go -- since you've been passed on this one point, is there a  
22 jury room downstairs set up so it's -- well, we're going to  
23 ask you to remain in the jury room. I'd admonish you not to  
24 discuss the questions you've been asked along this preliminary  
25 questioning along with the other jurors as they come down.

1 THE WITNESS: Thank you.

2 THE CLERK: Jack Yensen.

3 THE COURT: Bring in Earl Dodds.

4

5

EARL F. DODDS,

6

a prospective juror herein, having been duly sworn, took the  
7 stand and testified as follows:

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VOIR DIRE EXAMINATION

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BY MR. REMAKLUS:

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Q Mr. Dodds, the purpose of examining prospective  
jurors individually at this point is for the specific purpose  
of determining whether or not you've been exposed to pretrial  
publicity such as newspaper articles, television broadcasts  
and conversations with others that may have caused you to have  
a preconception of the facts of this case, or caused you to  
have an opinion as to guilt or innocence or put you in a frame  
of mind to where you could not be an impartial juror in this  
matter.

20

21

22

Now, we're going to limit our questions only to  
those aspects and in that nature I would ask you if you  
subscribe to the Idaho Daily Statesman?

23

A No, I do not subscribe to the paper.

24

Q Do you take the local Star News?

25

A Yes, I do.

1 Q And are you -- do you follow the events in the  
2 Star News closely?

3 A Yes, reasonably closely.

4 Q I'm assuming that there have been some articles,  
5 I think, in the Star News about this case, the Creech case;  
6 have there not?

7 A That's true.

8 Q Now, direct your attention to those articles.  
9 Do you recall whether or not there was anything in them that  
10 purported to speak of the evidence in the case?

11 A All I remember, when the case first broke last  
12 November in seeing the pictures of the victims and, then, I  
13 remember -- I think it was the next issue when there was a  
14 follow-up on --

15 Q Was that, perhaps, that an arrest has been made,  
16 or something?

17 A Yes, that an arrest had been made.

18 Q Do you recall reading anything other than those  
19 bare facts?

20 A No, I don't.

21 Q Now, Mr. Dodds, is there anything in those  
22 articles, to your recollection of them, that have caused you  
23 to form an opinion in this matter one way or the other?

24 A No, I don't believe so.

25 Q Do you think that those articles did anything

1 other than to advise you that there had been, apparently, some  
2 offense committed and an arrest made?

3 A. Yes.

4 Q. Did it go beyond that?

5 A. That's correct, that's about the extent of it.

6 Q. Now, are you -- do you have a television set at  
7 home?

8 A. Yes, I do.

9 Q. Do you watch the news?

10 A. Yes.

11 Q. And have you been watching the news recently?

12 A. Last night, yes.

13 Q. Is there anything -- have you followed the  
14 news closely enough to where that's caused you to have any  
15 opinion as to guilt or innocence in this matter?

16 A. No, I have no firm opinion.

17 Q. I think the purpose of this examination is to  
18 determine whether or not you could be a fair and impartial  
19 juror as a result of this pretrial publicity.

20 Do you feel that your following any of these  
21 television news broadcasts have raised any doubts in your  
22 mind? I don't mean to put any doubts, but have caused you to  
23 form an opinion that would take evidence to change?

24 A. Now, we're talking just about the two people at  
25 Donnelly?

1 Q Yes.

2 A No, I don't believe so.

3 Q And have you made it a point to follow the news  
4 broadcasts to pick up information about this case?

5 A Yes, I have; particularly since I was summoned to  
6 the jury.

7 Q Oh, I see, only since then, is that right?

8 A Well -- you say particularly since then?

9 Q Yeah. Before I forget, did you have occasion to  
10 read Sunday's Statesman?

11 A Yes, I did read that paper.

12 Q Did you read an article that appeared in the  
13 Sunday Statesman concerning this particular case?

14 A Yes, I did. I thought there was two articles.

15 Q There was an article Sunday, one Monday. Did you  
16 read Monday's paper too?

17 A I remember seeing two articles in recent days,  
18 yes.

19 Q Did you see this morning's paper, Mr. Dodds?

20 A No, I did not.

21 Q Do you think you remembered -- let me ask it this  
22 way: In reading the two recent articles, did they cause you  
23 to formulate any kind of an opinion in this matter?

24 A No, they did not.

25 MR. REMAKLUS: I have no further questions, Your Honor.

VOIR DIRE EXAMINATION

BY MR. HOWER:

Q Mr Dodds, have you heard very much talk about this case in the last couple of weeks by other people based on things they've read in the newspapers, or heard on the television?

A Yes. I guess I've heard practically daily conversations of this case.

Q From this talk, Mr. Dodds, and from what you've seen on television and read, do you have a pretty strong impression? I use the word "impression" as distinguished from a firm opinion or impression.

Do you have a pretty strong impression as to whether or not Thomas Creech has committed crimes in other states other than Idaho?

A I have that very strong impression.

Q Does that impression carry over to persuade you that he probably has committed the crimes that he's charged with in Idaho?

A Yes, I would think that's true, the impression.

Q I use the word "impression" now. I want to distinguish -- you've been asked about your opinion.

Do you know whether or not Mr. Creech has ever been in a mental institution?

A No, I have no knowledge of that.

1 Q Do you have a pretty strong idea whether he has?  
2 Do you recall reading, or hearing anything, about that?

3 A No, I don't recall reading anything on that  
4 particular point.

5 Q When you have found yourself in conversation  
6 with other people about the Creech case, have you frequently  
7 heard expressions of opinion as to what should be done, or  
8 should not be done with Thomas Creech?

9 A Yes, I have.

10 Q Have you ever expressed such an opinion yourself?

11 A No, I haven't, not to my knowledge or my  
12 recollection.

13 Q I know that what I'm going to ask you is very  
14 difficult to answer honestly and knowing that I want you to  
15 think carefully about it before you do answer.

16 Do you feel that you can judge the question of  
17 Creech's guilt or innocence, if chosen as a juror, of the  
18 crimes he's charged with here in Idaho without being  
19 significantly influenced by what you may have heard or read  
20 that he is supposed to have done in other states? Can you  
21 separate these things out in your mind and approach the Idaho  
22 evidence as if you didn't know, as if you didn't have these  
23 other things in your mind at all?

24 A Yes, I think I could.

25 Q I take it, then, you are saying that your own

1 view is that you have no preconceptions, no opinions, no  
2 conclusions previously arrived at which will prevent you from  
3 deciding this case on the basis of the actual evidence  
4 presented in this court and nothing else?

5 Do you believe you can do that?

6 A. Yes, I believe I could do that.

7 MR. HOWER: I pass this juror for cause, Your Honor.

8 THE COURT: Just ask you one question, Mr. Dodds.

9 I'm going to give an instruction when I instruct  
10 the jury that the defendant is presumed to be innocent and that  
11 the State has to prove him guilty beyond a reasonable doubt, to  
12 prove every element of these offenses beyond a reasonable doubt.

13 Now, do you feel that -- I'm going to use the same  
14 term Mr. Hower did. Do you feel these impressions you've gotten  
15 will prevent you, or keep you from giving the defendant the  
16 benefit of that presumption and putting the burden on the  
17 State to prove him guilty beyond a reasonable doubt?

18 In other words, are you going to shift the burden  
19 of the defendant to prove his innocence rather than giving him  
20 the presumption of innocence and making the State prove the  
21 case based on these impressions you've formed here?

22 THE WITNESS: Well, Your Honor, I believe that he should  
23 be considered innocent until he's proven guilty, yes.

24 THE COURT: You would accept that instruction?

25 THE WITNESS: Yes.

1 THE COURT: In spite of what you've heard and read  
2 about the case?

3 THE WITNESS: Yes, I do.

4 THE COURT: And do you feel a conviction that you could  
5 really do that when you get in the jury room?

6 THE WITNESS: I think so.

7 THE COURT: I have no further questions.

8 MR. REMAKLUS: Thank you, Mr. Dodds.

9 THE COURT: Mr. Dodds, I'm going to ask you to go down  
10 to the jury room now since you've been passed and let me just  
11 ask you a general question, perhaps, conserve time.

12 Counsel will have a chance to examine you further  
13 on other matters. We're limiting it right now to this one  
14 point to, perhaps, save some time. But, do you have anything  
15 that perhaps would obviously keep you from being a juror in  
16 this case that maybe we should know about now; other than what  
17 we've asked you about here?

18 THE WITNESS: No, I haven't.

19 THE COURT: All right. Would you please not discuss  
20 the questioning you've been subjected to here with other  
21 members of the panel as they come down to the jury room?

22 THE WITNESS: All right.

23 THE COURT: You may be excused.

24 THE CLERK: Helen Hardin.

25 THE COURT: Bring in the next juror.

1                   You are Mr. Yensen?

2                   VOICE: Yes.

3

4                   JACK DOUGLAS YENSEN,

5                   a prospective juror herein, having been sworn, took the stand and  
6                   testified as follows:

7

8                   VOIR DIRE EXAMINATION

9                   BY MR. REMAKLUS:

10                  Q     Mr. Yensen, the purpose of calling you in here by  
11                  yourself is to ask you some questions only with reference to  
12                  what we refer to as pretrial publicity and by that I mean  
13                  newspaper articles, television broadcasts, conversations that  
14                  you may have overheard or participated in with reference to  
15                  this case and this aspect of the matter is all we're going to  
16                  ask you questions about at this time.

17                  Now, I know you live up near Donnelly; do you not?

18                  A.    Yes.

19                  Q     And do you folks subscribe to the Idaho Daily  
20                  Statesman?

21                  A.    Yes, we do.

22                  Q     Do you also subscribe to the local paper, the  
23                  Star News?

24                  A.    Yes.

25                  Q     And I assume that you have a television set?

1 A. Yes.

2 Q. Let's -- have you read articles, first, in the  
3 Star News about this matter?

4 A. You say have I?

5 Q. Yes.

6 A. Yes.

7 Q. Have those articles caused you to have an opinion,  
8 or formulate any ideas about this case?

9 A. Oh, I suppose to some extent.

10 Q. When did you -- let's go on to the Statesman. Do  
11 you read the paper every day, the daily papers?

12 A. Yes, I do.

13 Q. Have you read -- did you read the paper Sunday,  
14 May 18th?

15 A. Yes.

16 Q. Sunday's paper? Did you read an article in that  
17 case about -- I mean, in that issue of the paper about this  
18 case?

19 A. Yes.

20 Q. Did you read yesterday's paper, Mr. Yensen?

21 A. Yes, I did.

22 Q. Do you recall an article in the case about --

23 A. Yes, I did.

24 Q. And did you have time to read the paper this  
25 morning?

1 A. No, I didn't.

2 Q. Did the articles that appeared in Sunday's and  
3 Monday's paper, have they caused you to have an opinion as to  
4 guilt or innocence in this case?

5 A. Well, I don't know for sure. I suppose I've formed  
6 some opinion.

7 Q. Have you had conversations with friends and  
8 neighbors about this matter?

9 A. Oh, sure.

10 Q. And did the conversation -- did you have the  
11 conversations as a result of getting a jury summons?

12 A. Yes.

13 Q. Now, during those conversations do you recall that  
14 you ever expressed an opinion as to guilt or innocence of the  
15 defendant?

16 A. Well, I couldn't swear to that whether I did or  
17 not.

18 Q. Do you think that you followed the TV news  
19 broadcasts?

20 A. Pretty much, yes.

21 Q. Have you followed them in the last few days?

22 A. Yeah, part of the time.

23 Q. Did you see anything in there about this case  
24 today?

25 A. Yeah, I have, yes.

1 Q And have those broadcasts caused you to have an  
2 opinion?

3 A Well, like I say, I couldn't say truthfully.

4 Q Do you have reservations in your mind at this  
5 point that might take evidence produced here in the courtroom to  
6 change?

7 A State that again, please.

8 Q Do you have any ideas, or an opinion? Do you  
9 right now have an opinion about guilt or innocence that would  
10 require some evidence here in the courtroom that -- to change  
11 that opinion?

12 A Well, I don't know for sure.

13 Q Do you think, in view of the publicity that has  
14 attended this case, do you think that you could be an impartial  
15 juror in this case?

16 A Well, that I don't know either for sure.

17 Q Do you think that if you are finally selected,  
18 Mr. Yensen, that you could base your opinion of guilt or  
19 innocence strictly on the evidence that you would see and hear  
20 right here in this courtroom?

21 A That I don't know for sure either.

22 Q Do you think -- let's restate it another way.  
23 Do you think you could separate what you've heard in the past  
24 from what you would hear and see in the courtroom?

25 A Well, all I could say is I could try.

1 MR. REMAKLIUS: I have no further questions.

2

3 VOIR DIRE EXAMINATION

4 BY MR. HOWER:

5 Q Mr. Yensen, we live in a real world and we know  
6 that it's almost impossible to live in Valley County and not  
7 hear talk about a matter of this kind.

8 Have you read or heard talk about crimes that  
9 Mr. Creech is alleged, or supposed to have committed in other  
10 states?

11 A Have I heard or read?

12 Q Yes.

13 A Yes, I have.

14 Q Yeah. Would you feel, Mr. Yensen, that while  
15 we've got him here it's a good time to take care of those too?

16 A To take care of these other crimes?

17 Q Yes. To take care of his responsibilities for  
18 them; if any.

19 A Well, I really don't know about that.

20 Q Could you explain to me a little more closely what  
21 you mean when you say you don't know about it? You mean you  
22 reserve judgment about it?

23 A Well, I don't know how to explain it.

24 Q I'll try to work around the question, though, I'm  
25 going to be aiming at the same point.

1                   If you are instructed by the Judge that you are to  
2 base your verdict of guilt or innocence of the crime charged  
3 here solely on the evidence you hear in this courtroom, you  
4 honestly feel you could follow that instruction to the point of  
5 not leaning against Mr. Creech because you've heard he did  
6 something in another state?

7                   A.     Well, I couldn't swear that it wouldn't influence  
8 me.

9                   Q.     Do you feel that it would influence you?

10                  A.     Like I say, I don't know for sure.

11                  Q.     Mr. Yensen, you've been asked if you have an  
12 opinion as to Mr. Creech's probable guilt or innocence. Would  
13 it change your answer to that question if you knew that when  
14 we talk about guilt or innocence we're not necessarily talking  
15 about whether someone is dead or not; even whether they are  
16 dead at Mr. Creech's hands or not; but that the question of  
17 guilt or innocence involves motive, not whether he did it, but  
18 why he did it.

19                         Do you have an opinion as to why these acts  
20 occurred?

21                  A.     Do I now have an opinion why these acts occurred?

22                  Q.     Yes.

23                  A.     No, I don't know. No, I don't.

24                  Q.     On that question you have an open mind?

25                  A.     I think so.

1 Q Have you ever expressed to any person a desire  
2 to be on this jury?  
3 A No, I haven't.  
4 Q Have you ever expressed to any person a wish that  
5 you could avoid it?  
6 A Probably so.  
7 Q Mr. Yensen, I'm going to ask you sort of a  
8 classic question that lawyers frequently ask jury panelists.  
9 It's not a trick question. If you were sitting where  
10 Mr. Creech is, charged with this offense, would you be willing  
11 to trust your life to the honesty and the integrity of the  
12 person who felt about him as you now feel about him?  
13 A State that again.  
14 Q If you were charged with this offense, would you  
15 be willing to have on your jury a person who came to that job  
16 with the attitude and opinions and intentions that you now have?  
17 A Well, I don't know.  
18 Q I'm asking you if I could see into your soul, or  
19 Mr. Creech could see into your soul, would we take you off  
20 this jury or leave you on?  
21 A That I don't know.  
22 Q Do you feel that you can be fair to Mr. Creech  
23 in a sense of making up your mind finally on the basis of the  
24 actual evidence relating to the crimes he's charged with in  
25 this trial?

1 A Well, all I can say is I could try.  
2 MR. HOWER: All right, I'll pass this juror for cause,  
3 Your Honor.

4 THE COURT: Mr. Yensen, let me ask you not to discuss  
5 this case with other -- or discuss the case or this  
6 particular question that's been asked you here, with the  
7 other members as you go back down in the jury room.

8 I'm going to ask you to go back down to the jury  
9 room.

10 THE WITNESS: That's downstairs here?

11 THE COURT: Yes, not back to the VFW. The Bailiff will  
12 show you the way.

13 THE CLERK: Icle Lewis.

14 MR. REMAKLUS: We should have Mrs. Hardin in at this  
15 point; shouldn't we?

16 THE COURT: Yes.

17  
18 HELEN B. HARDIN,  
19 a prospective juror herein, having been duly sworn, took the  
20 stand and testified as follows:

21  
22 VOIR DIRE EXAMINATION

23 BY MR. REMAKLUS:

24 Q Mrs. Hardin, the purpose of asking you to come  
25 into the courtroom and be questioned individually is to talk

1 about what you may have read in the paper or what you may have  
2 seen on television, conversations that you may have overheard  
3 or participated in with reference to this case.

4 Our questions are going to be pretty much limited  
5 to this pretrial publicity as we call it and whether or not  
6 this has caused you to have a fixed opinion in this case.

7 However, I do have one preliminary question,  
8 Your Honor, I would like to ask Mrs. Hardin if the attorney and  
9 client relationship exists between Mrs. Hardin and Mr. Hower.

10 A. You mean --

11 Q. Is he doing legal work for you now?

12 A. Not right at the present time. Now, he helped  
13 us adopt our son.

14 Q. And when was that?

15 A. Last month.

16 Q. And is he paid and everything?

17 A. No, I haven't got down to the bank to draw it out  
18 yet.

19 Q. But, the debtor-creditor relationship, then, does  
20 exist?

21 A. I guess so.

22 MR. HOWER: Have you got a bill yet, Mrs. Hardin? I  
23 don't remember whether you have or not.

24 THE WITNESS: About the 10th of the month.

25 MR. REMAKLUS: I would ask that she be excused for

1 cause, then, Your Honor.

2 MR. HOWER: Oh, Your Honor, I don't understand that  
3 that constitutes cause for excusing a juror.

4 THE COURT: No, attorneys aren't parties here and the  
5 debtor-creditor has to exist between the complaining witness  
6 -- or the -- I'll deny the challenge.

7 Q. BY MR. REMAKLUS: Yes, Mrs. Hardin, you folks  
8 subscribe to the Idaho Daily Statesman?

9 A. No, we don't.

10 Q. Have you read, say, Sunday's Statesman?

11 A. At the hospital.

12 Q. You work at the hospital?

13 A. Yes, I do.

14 Q. Do you read the paper up there every day?

15 A. Not every day.

16 Q. Did you read an article in Sunday's paper about  
17 this case?

18 A. Yes, I did.

19 Q. Did it cause you to have any opinion in the  
20 matter?

21 A. Well, that didn't.

22 Q. Have you read other -- did you read the paper  
23 yesterday?

24 A. No.

25 Q. How about this morning?

1 A. No.

2 Q. Do you folks take the Star News, the local

3 paper?

4 A. Yes.

5 Q. Have you read about this case in the Star News?

6 A. Let's see. It's been about two months since I've

7 been able to have time to sit down and read, really.

8 Q. Fine. So, nothing you read in the Star News that

9 would cause you to have any opinions one way or another in this

10 case, is there?

11 A. No.

12 Q. Of your -- well, let me ask you, do you folks

13 have a TV set at home?

14 A. Yes, we do.

15 Q. Do you watch the news?

16 A. We do.

17 Q. Have you seen news broadcasts recently about

18 this case?

19 A. Yes, I have.

20 Q. And how recent, Mrs. Hardin?

21 A. Just here the other night, about Monday night;

22 wasn't it? I think.

23 Q. Did it -- did that broadcast cause you to have

24 any opinions in this matter?

25 A. No, I had already had some opinions before.

1 Q Well, that's what I was going to ask you now.  
2 With particular reference to the -- say the period of time  
3 since you received your summons to be here today, have you  
4 had conversations about this matter?

5 A Yes. My husband and I had talked about it and  
6 different ones have talked about it.

7 Q Well, during these -- during these conversations  
8 have you expressed an opinion as to guilt or innocence?

9 A Yes.

10 Q Do you, right now, have an opinion as to guilt  
11 or innocence?

12 A Yes.

13 Q Do you think that your opinion is such that it  
14 would prevent you from being a fair and impartial juror in  
15 this case?

16 A I'm thinking so.

17 Q You have some -- you have a preconceived idea of  
18 guilt or innocence?

19 A Yes, I do.

20 MR. REMAKLUS: I'd ask to have the juror excused,  
21 Your Honor.

22 THE COURT: Want to question the juror?

23 MR. HOWER: No, Your Honor.

24 THE COURT: You will join in the challenging? If you  
25 don't -- at least you don't take exception to the challenge?

1 MR. HOWER: I'm neutral on the challenge.

2 THE COURT: You don't take exception?

3 MR. HOWER: No.

4 THE COURT: All right. We'll excuse you, then,  
5 Mrs. Hardin. We appreciate your frankness about the matter.

6 You'll have to report again on June 5th at  
7 1:00 for another trial.

8 THE WITNESS: Okay.

9 THE COURT: So, you can be excused.

10 THE CLERK: Felma Evans.

11

12 ICLE C. LEWIS,

13 a prospective juror herein, having been duly sworn, took the  
14 stand and testified as follows:

15

16 VOIR DIRE EXAMINATION

17 BY MR. REMAKLUS:

18 Q. I will stand over here so we can see.

19 Mrs. Lewis, the purpose of asking you to come in  
20 here by yourself is to ask you some questions concerning  
21 whether or not you have heard and seen this matter on  
22 television, whether or not you have read newspaper articles  
23 about it or had conversations with other people about it and  
24 whether or not you have formed an opinion.

25 Now, do you folks -- do you take the Statesman?

1 A. Yes, we do.  
2 Q. Do you read it every day?  
3 A. Yes.  
4 Q. Did you read Sunday's Statesman?  
5 A. Yes, sir.  
6 Q. Did you read the article about this matter?  
7 A. Yes.  
8 Q. Did you read yesterday's paper?  
9 A. Yes.  
10 Q. Do you remember seeing an article about this  
11 case?  
12 A. Yes, I do.  
13 Q. Did you have time to read this morning's paper?  
14 A. No.  
15 Q. Do you folks take the Star News also, Mrs. Lewis?  
16 A. No. Our paper run out --  
17 Q. Okay.  
18 A. -- about two months ago.  
19 Q. Do you folks have a television set?  
20 A. Yes, we do.  
21 Q. Do you watch the news?  
22 A. Yes.  
23 Q. Have you seen news broadcasts about this matter?  
24 A. Some, very little.  
25 Q. Have you discussed this matter with your friends

1 or with your husband?

2 A. Just with my husband is all.

3 Q. Have you ever expressed an opinion as to guilt or  
4 innocence in this matter?

5 A. No, sir.

6 Q. Have the newspaper articles that you've read, or  
7 the television broadcasts, caused you to have an opinion?

8 A. No.

9 Q. You think you have an open mind here today in this  
10 matter, Mrs. Lewis?

11 A. I do.

12 Q. If the Judge instructs you that the defendant is  
13 presumed to be innocent until we prove he is guilty beyond a  
14 reasonable doubt could you follow that instruction?

15 A. Certainly.

16 MR. REMAKLUS: I'll pass the juror for cause.

17

18 VOIR DIRE EXAMINATION

19 BY MR. HOWER:

20 Q. Mrs. Lewis, I'm going to stand so we can see  
21 each other too.

22 A. Okay. Thank you.

23 Q. Have you read about any crimes that this defendant  
24 is accused of; or is thought to have committed in other states?

25 A. Yes, in the paper.

1 Q Do you believe he's really done this?  
2 A No, I don't know. I'm sure I don't.  
3 Q You've read about it?  
4 A Yes.  
5 Q But, you haven't formed an opinion?  
6 A No, I haven't.  
7 Q How close do you live to the scene of these  
8 events?  
9 A We live two miles.  
10 Q About two miles?  
11 A Donnelly, but I was in Ketchum, Idaho.  
12 Q You were in Ketchum?  
13 A I was in Ketchum, Idaho visiting my son.  
14 Q Have you been involved in conversations; that is,  
15 have you heard other people express to you any opinion as to  
16 whether or not this specific defendant, Thomas Creech, ought to  
17 be --  
18 A My husband and I?  
19 Q Does your husband have an opinion?  
20 A No.  
21 Q No opinion at all? Have you ever expressed an  
22 opinion to any person in conversation as to whether you think  
23 Mr. Creech is guilty or not?  
24 A Not either way.  
25 Q Not either way?

1 A. Not either way.

2 Q. Is there any reason at all that you are uneasy  
3 about your ability to serve as a fair juror?

4 A. No.

5 Q. Judge this case on the evidence and not on  
6 anything else?

7 A. No, I don't.

8 MR. HOWER: Pass this juror for cause, Your Honor.

9 THE COURT: Mrs. Lewis, you may go down to the jury  
10 room.

11 Don't discuss your questioning here with the  
12 other jurors.

13 We won't draw another name. We'll have the one  
14 remaining juror and take our noon recess.

15

16 FELMA L. EVANS,

17 a prospective juror herein, having been duly sworn, took the  
18 stand and testified as follows:

19

20 VOIR DIRE EXAMINATION

21 BY MR. REMAKLUS:

22 Q. Mrs. Evans, the reason you are called in privately  
23 and before all, you know, not with the rest of the prospective  
24 jurors, is to discuss with you the, what we referred to as  
25 pretrial publicity.

1                   Now, specifically I'm talking about newspaper  
2 articles, television broadcasts or conversations that you may  
3 have participated in, or overheard, concerning this particular  
4 case.

5                   Now, we're not going to get beyond that field of  
6 questioning at this particular time. Now, do you folks -- do  
7 you take the Idaho Daily Statesman?

8           A.     Yes.

9           Q.     And do you subscribe to the local paper, the  
10 Star News?

11          A.     Yes.

12          Q.     You and Mr. Evans have a television set?

13          A.     Yes.

14          Q.     Are you -- do you read the paper every day?

15          A.     Just about.

16          Q.     And do you watch television in the evenings?

17          A.     Most of the time, not every evening, but most of  
18 the time.

19          Q.     Do you customarily watch the news?

20          A.     Yes.

21          Q.     On TV?

22          A.     Usually more in the winter than we do in the  
23 summer.

24          Q.     I think that's like the rest of us, Mrs. Evans.  
25 Now, did you read the Statesman Sunday?

1 A. No.

2 Q. Did you read yesterday's Statesman?

3 A. Yes.

4 Q. Did you see an article about the case yesterday?

5 A. Yes.

6 Q. Did you have time to see the paper this morning?

7 A. No, not read it. I just glanced through it.

8 Q. You didn't read anything about the case, then,

9 today, is that right?

10 A. Seemed like I read a little about where they was

11 going to have the trial today.

12 Q. Um-hmm. That's all then that you recall seeing?

13 A. Um-hmm.

14 Q. Now, with reference to the --

15 A. Oh, I did read something about calling in another

16 lawyer or something.

17 Q. And that's your recollection?

18 A. Um-hmm.

19 Q. That was, probably, in the headlines; wasn't it?

20 Do you -- have you formed an opinion as to guilt

21 or innocence as a result of reading the papers?

22 A. Well, I guess I haven't to a certain extent.

23 Q. Do you have a frame of mind now, do you think,

24 that would take evidence produced here in the courtroom to

25 change your mind?

1 A. I'm afraid so.

2 Q Do you think you could be fair and impartial, a  
3 fair and impartial juror here in this case in view of what  
4 you've heard -- read about it?

5 A. I sort of doubt it.

6 Q Have you had any conversations about this case  
7 with your husband or other people?

8 A. We've talked about it.

9 Q Have you expressed any opinion as to guilt or  
10 innocence?

11 A. You mean, have I said myself?

12 Q Yes, um-hmm.

13 A. Well, by the stories I read, I just presumed that.

14 Q You presumed one way or the other, is that right?

15 A. Yeah.

16 Q If you are finally chosen as a juror the Judge  
17 will instruct you that the defendant is presumed to be innocent  
18 until proven guilty beyond a reasonable doubt and I'm sure that  
19 the Judge will also instruct you that you have to make up your  
20 mind based upon the evidence that you would see and hear here  
21 in the courtroom.

22 Now, if you are accepted as a juror and the Judge  
23 does instruct you that the defendant is presumed innocent until  
24 proven guilty beyond a reasonable doubt and that you must base  
25 your decision on the evidence here, could you follow the

1 Judge's instructions?

2 A. Well, I'd try to follow them.

3 Q. You realize that you would be sworn to follow  
4 those instructions; don't you?

5 A. Yes.

6 MR. REMAKLUS: We'll pass the juror for cause.

7 MR. HOWER: Your Honor, I'll challenge the juror for  
8 cause on the basis of the answers she gave to the Prosecutor's  
9 questions.

10 THE COURT: Just let me ask one question. You've  
11 elaborated on questions Mr. Remaklus asked you, Mrs. Evans.

12 These stories you've read that has formed the  
13 opinion you've formed, did those stories involve alleged  
14 crimes in other states also?

15 THE WITNESS: Yes.

16 THE COURT: You've read something about that?

17 THE WITNESS: Yes.

18 THE COURT: Understood you to say you would try to  
19 follow my instructions but I infer from what you told  
20 Mr. Remaklus that it would just be difficult for you to remove  
21 these things from your mind that you've got there now?

22 THE WITNESS: That I've read.

23 THE COURT: All right, we appreciate your frankness,  
24 Mrs. Evans. We'll excuse you, then. You'll have to report  
25 again on June 5th at 10:00 for another jury trial. If you will

1 remember that date, June 5th at 10:00. It will be a jury for  
2 another trial.

3 Thank you for your courtesy.

4 THE WITNESS: Um-hmm.

5 THE COURT: We'll take our noon recess until 1:15.

6 We have one juror that was missing and I think  
7 it would be appropriate to have her sworn on voir dire at this  
8 time so we'll swear her on voir dire.

9 (Whereupon Patricia J. Borchardt was placed under  
10 oath for voir dire examination.)

11 THE COURT: Mrs. Borchardt, would you please abide by  
12 this admonition.

13 During all the times you are involved in this  
14 trial in any capacity that you not discuss the case with other  
15 jurors at all; that you not let anyone approach you and discuss  
16 the case with you and if that person does approach you and  
17 tries to discuss the case with you that you report it to one  
18 of the Court Officers or myself and, at least from this point  
19 on, since the selection of the jury may go over until tomorrow,  
20 that you not read any news stories about this trial or listen  
21 to any radio or TV broadcasts, or watch any TV about this.

22 In other words, try to be cautious so you won't  
23 hear any kind of reports from this point on. If you will abide  
24 by that admonition.

25 MRS. BORCHARDT: Okay.

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THE COURT: We'll commence again at 1:15.

(Noon recess taken.)

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CASCADE, IDAHO, TUESDAY, MAY 20, 1975, 1:25 P.M.

THE COURT: I'll have the Clerk draw two more names.  
THE CLERK: Patricia Borchardt and Sandra K. Durk.

PATRICIA J. BORCHARDT,  
a prospective juror herein, having been duly sworn, took the  
stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Borchardt, the purpose of asking you to come  
into the courtroom by yourself and not accompanied by other  
prospective jurors is to ask you some questions concerning  
pretrial publicity; that is, television broadcasts, newspaper  
articles, conversations that you may have overheard or  
participated in as to whether or not these things may have  
caused you to have a prejudice in this matter one way or the  
other.

Now, I assume that you read the daily papers,  
is that right?

A. Yes, it is.

Q And you read the Statesman?

A. Yes.

1 Q. Been reading it for the last few days?

2 A. Yes.

3 Q. Of the articles in there, have you read articles  
4 in there about the trial?

5 A. Yes.

6 Q. Has this caused you to be prejudice one way or  
7 the other in this matter?

8 A. I believe it would.

9 Q. Have you -- you folks have a television set?

10 A. Yes.

11 Q. Watch the news?

12 A. Yes.

13 Q. And I suppose you've seen the news broadcasts  
14 from time to time?

15 A. I have.

16 Q. Do you think these things have caused you to  
17 have a frame of mind that might cause some prejudice one way  
18 or another?

19 A. Yes.

20 Q. Do you take the local paper?

21 A. Yes.

22 Q. I suppose you've read something about it in there?  
23 I don't think there's been much.

24 A. Yes, I have.

25 MR. REMAKLUS: I have no further questions, Your Honor.

1 MR. HOWER: I challenge this juror for cause, Your Honor.  
2 She stated that she was prejudice.

3 THE COURT: Let me ask you, Mrs. Borchardt, among other  
4 things you've read, have you read alleged allegations about  
5 crimes in other states?

6 THE WITNESS: I have read some of them, yes.

7 THE COURT: Is that part of the reason that is affecting  
8 your --

9 THE WITNESS: Yes, it is.

10 THE COURT: All right, I'll grant the challenge. We  
11 appreciate your frankness, Mrs. Borchardt. We'll excuse you.

12 We do have another jury trial scheduled on  
13 June the 5th at 10:00 if you will remember that date.

14 THE WITNESS: All right.

15 THE COURT: And report at that time.

16 We appreciate your appearing this morning.

17 THE WITNESS: Thank you.

18 THE CLERK: John Durbin.  
19  
20  
21  
22  
23  
24  
25

1 SANDRA K. DURK,  
2 a prospective juror herein, having been duly sworn, took the  
3 stand and testified as follows:

4  
5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Is it Mrs. Durk?

8 A Yes.

9 Q Mrs. Durk, we asked you to come into the  
10 courtroom at this time to ask you some questions concerning  
11 pretrial publicity that has come up in regard to this case  
12 and these are the -- we're going to ask you some questions  
13 about newspaper publications, television news broadcasts and  
14 things of that nature.

15 Now, I assume that you followed the papers  
16 somewhat?

17 A Yes.

18 Q Daily paper?

19 A We don't subscribe to the Statesman.

20 Q You do not? And you follow the Star News, the  
21 local paper?

22 A Yeah.

23 Q All right. And you folks have a television set,  
24 I assume? You catch the news broadcasts from time to time?

25 A Yes.

1 Q Now, have you ever had any conversations with  
2 anyone regarding this case that purported to know any of the  
3 details of it?

4 A You mean somebody that knew something about it?

5 Q Yes.

6 A No.

7 Q The fact that you have heard about it in the  
8 papers and seen it on the TV news, now, has this caused you  
9 to have any prejudice in your mind; either for or against  
10 the defendant?

11 A Not really.

12 Q If you are accepted as a trial juror in this  
13 matter and the Court -- and I'm sure he will instruct you  
14 that the defendant is presumed to be innocent until proven  
15 guilty beyond a reasonable doubt. Now, I'm assuming that you  
16 could follow the instructions of the Court; could you not?

17 A Yes.

18 Q And I'm sure that the Judge would further  
19 instruct that you would have to base your decision solely on  
20 evidence that you saw and heard here in the courtroom.

21 A Yes.

22 Q Now, you think you'd have any difficulty doing  
23 that, Mrs. Durk?

24 A I don't believe so.

25 MR. REMAKLUS: I don't either. I'll pass the juror

1 for cause.

2 MR. HOWER: I'll pass the juror for cause, Your Honor.

3 THE COURT: We'll ask you to remain, then, down in the  
4 jury room. Some of the other jurors are down there. I'll ask  
5 you not to discuss the particular questions that were asked with  
6 the other jurors.

7 THE WITNESS: Okay.

8 THE CLERK: John Laur.

9  
10 JOHN L. DURBIN,  
11 a prospective juror herein, being first duly sworn, took the  
12 stand and testified as follows:

13  
14 VOIR DIRE EXAMINATION

15 BY MR. REMAKLUS:

16 Q Mr. Durbin, we've asked you in here as a  
17 prospective juror merely to discuss pretrial publicity; that  
18 is, television broadcasts or newspaper articles and things of  
19 this nature.

20 Now, you follow the daily papers?

21 A. Yes, I do.

22 Q. Do you take the local paper, the Star News?

23 A. No, I don't.

24 Q. Do you have -- are you in the habit of watching  
25 television?

1 A. Every day.

2 Q. Follow the news broadcasts, I suppose?

3 A. Very closely.

4 Q. Have you had any conversations about this matter  
5 other than conversations as a result of being summoned here as  
6 a prospective juror?

7 A. Well, through the months we've talked about it  
8 with several people, many people.

9 Q. Did any of them, Mr. Durbin, did they purport, or  
10 represent to you, that they knew any specific facts about the  
11 case?

12 A. No.

13 Q. Have you -- do you have any prejudice as a result  
14 of the newspaper or TV?

15 Do you have any prejudice one way or another in  
16 this matter at this time?

17 A. Yes, I do.

18 Q. If you were accepted as a trial juror and, if the  
19 Judge instructed you as a matter of law that you had to base  
20 your decision solely on the evidence here in the courtroom and  
21 that the defendant is presumed innocent until proven guilty  
22 beyond a reasonable doubt, would you have any trouble following  
23 His Honor's instructions?

24 A. Well, my own opinion is the only thing. I get my  
25 mind made up and get a little bull headed, sometimes.

1 Q And you have your mind made up now, Mr. Durbin?  
2 A Yes.  
3 THE COURT: Just a minute.  
4 MR. REMAKLUS: I have no further questions.  
5 MR. HOWER: Challenge for cause, Your Honor.  
6 THE COURT: Let me just ask you a couple of questions,  
7 Mr. Durbin.  
8 You indicated you do have an opinion based on  
9 things you've heard and discussed and read?  
10 THE WITNESS: Yes.  
11 THE COURT: Would it be possible for you to set aside  
12 that opinion and render your verdict based solely on the  
13 evidence received here in court?  
14 THE WITNESS: Well, that I don't know.  
15 THE COURT: You'd have a doubt about it?  
16 THE WITNESS: Yes, I'd have a doubt about it, yes.  
17 THE COURT: Can you tell me what particularly you've  
18 read or heard about it that's caused you to have this opinion?  
19 THE WITNESS: Well, goes back a long ways.  
20 THE COURT: I don't want you to state what your  
21 opinion is, not asking for that. I want to know what part of  
22 your reading or what you've heard or read about the case has  
23 caused you to have this opinion.  
24 THE WITNESS: Just everything about it, everything that  
25 I've read.

1 THE COURT: Have you read anything about the defendant  
2 being -- having allegedly committed crimes in other states?

3 THE WITNESS: Yes.

4 THE COURT: Has that played a part?

5 THE WITNESS: That plays quite a part.

6 THE COURT: Quite a part, you say?

7 THE WITNESS: Yes.

8 THE COURT: All right, I'll grant the challenge. We'll  
9 excuse you, then, and appreciate your frankness here.

10 We do have another trial scheduled on June the 5th  
11 at 10:00. We'll ask you to report again then, if you  
12 remember that date.

13 THE CLERK: Clifford Roberts.

14

15 JOHN R. LAUR,

16 a prospective juror herein, being first duly sworn, took the  
17 stand and testified as follows:

18

19 VOIR DIRE EXAMINATION

20 BY MR. REMAKLUS:

21 Q Mr. Laur, the purpose of asking you to come in  
22 here by yourself is to go over what we referred to as pretrial  
23 publicity and by this I'm referring to newspaper articles,  
24 television broadcasts and conversations that perhaps you've  
25 overheard or participated in and we're going to confine our

1 questions and remarks to that area.

2 Now, have you followed the papers with any degree  
3 of regularity with reference to this case?

4 A. Oh, I read them some every day, sure.

5 Q. And have you read them recently the last few  
6 days?

7 A. Yesterday.

8 Q. I don't suppose you read today's, probably too  
9 early?

10 A. No.

11 Q. Okay. Do you have a TV set at home?

12 A. Um-hmm.

13 Q. Do you follow the TV news?

14 A. Oh, just part of the time.

15 Q. Have you, as a result of the reading of the  
16 papers and occasional TV broadcasts, has this caused you to  
17 have any prejudice in your mind with reference to this case?

18 A. Well, I think so.

19 Q. Mr. Laur, if you were accepted as a juror and  
20 you are instructed by the Judge to base your evidence -- or  
21 base your decision only on the evidence that would be  
22 presented here in the courtroom, could you do that, follow  
23 the instructions?

24 A. Well, I don't hardly think so. I doubt if  
25 anybody could.

1 Q Do you think if you were instructed by His Honor  
2 that the defendant is presumed to be innocent until proven  
3 guilty beyond a reasonable doubt, could you follow that  
4 instruction?

5 A I don't think very well, no.

6 MR. REMAKLUS: I have no further questions, Your Honor.

7 MR. HOWER: Challenge for cause, Your Honor.

8 THE COURT: Mr. Laur, I'd like to know for the record  
9 here whether there's any specific things you've read that you  
10 remember now that -- or heard -- that has caused you to form  
11 this opinion. I'm not asking you to state what your opinion  
12 is, guilt or innocent, I just want to know if there's some  
13 specific things you've read that you carry in your mind as  
14 having this fixed opinion, or causing you to have this fixed  
15 opinion.

16 I'd like to have you tell me what the specific  
17 things are, if --

18 THE WITNESS: I don't think anything in particular.

19 THE COURT: I see, just everything in general that  
20 you've read?

21 THE WITNESS: Um-hmm, yes.

22 THE COURT: Well, I'll grant the challenge and you'll  
23 be excused, Mr. Laur. I appreciate your truthfulness. We  
24 have another trial scheduled on June the 5th at 10:00 and you'll  
25 have to report for that trial.

1 THE WITNESS: Yes, all right.

2 THE CLERK: J. H. Johnson.

3

4

CLIFFORD ROBERTS,

5

a prospective juror herein, having been duly sworn, took the  
6 stand and testified as follows:

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8

VOIR DIRE EXAMINATION

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BY MR. REMAKLUS:

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Q Mr. Roberts, you've been asked to come to the

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courtroom in the absence of the other prospective jurors to  
12 discuss pretrial publicity; that is, newspaper articles,

13

television broadcasts or any conversations that you may have  
14 overheard or participated in and our remarks will be limited  
15 to that.

16

Now, have you followed the newspapers and

17

newspaper accounts of this matter?

18

A. Yes.

19

Q And have you seen it on television?

20

A. Yes.

21

Q Have these caused you to have any prejudice

22

one way or another in this matter?

23

A. Oh, in a way, yes.

24

Q If you were accepted as a trial juror and the

25

Judge was to instruct you that you had to base your decision

1 only on the evidence produced here in the courtroom, could you  
2 follow that instruction?

3 A. Well, I've kind of got an opinion. I don't know.

4 Q. Now, do you -- if, as I'm sure the Judge will  
5 instruct the jury, that the defendant is presumed to be innocent  
6 until proven guilty beyond a reasonable doubt and if you are  
7 selected as a trial juror, could you give this defendant the  
8 benefit of that presumption?

9 A. I suppose so.

10 MR. REMAKLUS: I have no further questions.

11 MR. HOWER: Challenge for cause, Your Honor.

12 THE COURT: I want to ask you a couple of questions,  
13 Mr. Roberts.

14 You indicate you have read about the case and  
15 have heard about it and this has caused you to form an opinion,  
16 is that what you said?

17 THE WITNESS: Yes, sir.

18 THE COURT: And that opinion deals with guilt or  
19 innocence of the defendant?

20 THE WITNESS: Yes.

21 THE COURT: Can you tell me what specifically you've  
22 read or heard that's caused you to form this opinion; any  
23 specific details that stands out as having caused you to form  
24 the opinion?

25 I don't want you to state the opinion, I just

1 want to know what's caused you to have it if you are -- a little  
2 more specifically than you've outlined here.

3 THE WITNESS: Well, I don't just understand just what  
4 you mean.

5 THE COURT: Well, is there any specific part about  
6 the stories or news broadcasts that you've heard that's causing  
7 you to have the opinion?

8 THE WITNESS: Yes, I'd say there was.

9 THE COURT: What is it, specifically?

10 THE WITNESS: Well, all these different things you  
11 hear in other states.

12 THE COURT: From other states, the alleged crimes in  
13 other states, is that the thing that stands out in your mind  
14 primarily?

15 THE WITNESS: Yes.

16 THE COURT: I'll grant the challenge.

17 We appreciate your coming here, Mr. Roberts.  
18 You'll have to report again on June 5th at 10:00 for another  
19 trial, if you'll remember that date.

20 THE CLERK: Roy West.

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J. H. JOHNSON,

a prospective juror herein, having been first duly sworn, took the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mr. Johnson, if I may stand up here, Your Honor, because the --

THE COURT: All right.

Q. BY MR. REMAKLUS: We've asked you to come in here by yourself without any of the other prospective jurors being here in order to discuss with you the pretrial publicity in connection with this case and by that I'm referring to newspaper articles and television broadcasts and things like that.

We're going to confine our questions to this particular area.

Now, have you read about this case in the papers?

A. No, I have not.

Q. Do you follow television news, Mr. Johnson?

A. Well, I've never seen anything on the news on this particular case.

Q. And have you, other than maybe discussing the facts that you are -- you've been summoned here as a prospective juror; have you talked about it?

1 A. Well, I have heard pieces of it. I've heard  
2 pieces that someone was shot down by Donnelly.

3 Q Um-hmm.

4 A. I heard this.

5 Q Um-hmm. Now, bearing in mind that you've heard  
6 that, is there anything in connection with that that would --  
7 that would create a frame of mind that would not be fair and  
8 impartial if you are called as a juror?

9 A. No.

10 Q You've got an open mind with reference to this  
11 matter; have you not?

12 A. Yes.

13 MR. REMAKLUS: I have no further questions, Your Honor,  
14 pass the juror for cause.

15

16 VOIR DIRE EXAMINATION

17 BY MR. HOWER:

18 Q Mr. Johnson, did you say whether or not you  
19 subscribe, or take regularly the Idaho Daily Statesman?

20 A. I don't take the paper.

21 Q And you don't read it?

22 A. No.

23 Q In the talk that you've heard with the Creech  
24 case, have you heard any talk whatever to the effect that he is  
25 supposed to have committed crimes in other states?

1 A. Had what?

2 Q. That he's supposed to have committed crimes in  
3 other states?

4 A. Well, I've heard that too, that he has -- that you  
5 had taken him someplace to find bodies.

6 Q. Do you believe that really happened?

7 A. I don't know. I knew -- I say, I've heard that  
8 he is supposed to have gone and I don't -- can't say who he  
9 went with, to locate some bodies of other people.

10 Q. But, do you --

11 A. I have not heard whether they found any bodies  
12 or not. That's as much as I know about the case.

13 Q. Well, does your having heard this -- you've heard  
14 that he was taken to other states to look for bodies, does this  
15 make you think that he probably has some responsibility for  
16 some bodies in other states?

17 A. Well, if the man would lead whoever he took, or  
18 whoever took him to show them where he put other bodies, I  
19 would assume that there's other bodies involved.

20 Q. Would you assume also, Mr. Johnson, that  
21 Mr. Creech probably had some responsibility for them?

22 A. Well, why would he lead them -- lead somebody to  
23 find bodies if he didn't?

24 Q. All right, that answers my question.

25 Would you assume from all you know about this, do

1 you think it probable that Mr. Creech is guilty of the crimes  
2 charged here in Valley County?

3 A. Well, I would have to have more information than  
4 I have to make up my mind as to who is responsible for what.  
5 You can hear most anything.

6 Q. If you sat on the jury on this case, Mr. Johnson,  
7 would you be able to exclude from your mind any slant that  
8 might result from what you've heard; that he did, or might  
9 have done, in other states?

10 A. If I'm selected on this jury, so God help me, I  
11 would do the best that my little mind would allow me to do.

12 Q. On the basis of what you heard as evidence in  
13 court here?

14 A. It would have to be purely the evidence that  
15 comes out in court.

16 Q. You would be able to resist any temptation to  
17 prejudge the defendant's guilt?

18 A. I have not prejudged.

19 MR. HOWER: Pass Mr. Johnson for cause, Your Honor.

20 THE COURT: Mr. Johnson, we'll ask you to go down to  
21 the jury room with some other jurors. Don't discuss the  
22 questions that were asked of you.

23 THE CLERK: Shirley Brown.

24

25

1 ROY O. WEST,  
2 a prospective juror herein, being first duly sworn, took the  
3 stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mr. West, you've been asked to come into the  
8 courtroom in the absence of the other prospective jurors to  
9 cover only the matter of pretrial publicity and the only thing  
10 -- what I'm referring to in this regard is newspaper articles,  
11 radio or television broadcasts and, possibly, conversations  
12 that you might have overheard.

13 Now, keeping this in mind, do you follow the daily  
14 papers?

15 A Yes, pretty well, um-hmm.

16 Q And have you read about this case?

17 A Yes.

18 Q And do you have a television set?

19 A Yes.

20 Q And do you watch television in the evenings?

21 A Yes.

22 Q Have you seen anything about this matter?

23 A Yes, off and on.

24 Q And has there been anything that occurred during  
25 your experience in reading the papers and listening to the

1 television that would cause you to be, if you were accepted as  
2 a juror, that could cause you to be -- or make you unable to  
3 be fair and impartial if you were asked to be a juror in this  
4 case?

5 A Well, I feel I can be fair in any case, but this  
6 would be just a little harder.

7 Q Now, Mr. West, if the Court were to instruct you  
8 that you had to base your decision on evidence produced in this  
9 courtroom, would you have any difficulty following that  
10 instruction?

11 A No, sir.

12 Q And if the Judge were to instruct you as I'm sure  
13 he will that the defendant is presumed to be innocent until  
14 proven guilty beyond a reasonable doubt, you likewise would  
15 follow that instruction; would you not?

16 A Yes, sir.

17 MR. REMAKLUS: I'll pass the juror for cause.  
18

19 VOIR DIRE EXAMINATION

20 BY MR. HOWER:

21 Q Mr. West, have you read in the newspapers, stories  
22 of -- about crimes in other states that Mr. Creech is supposed  
23 to have committed?

24 A I can't remember any of them, but I have, yes.  
25 I don't know where or anything, but I have heard -- I have read,

1 yes.

2 Q Have there been several of these that you can now  
3 recall?

4 A One or two is all.

5 Q What states could you name in which Mr. Creech is  
6 supposed to have committed crimes?

7 A I believe California was the only one I remember.

8 Q Is it your statement now, Mr. West, that having  
9 read that you remain free from prejudice against Mr. Creech?

10 A Not necessarily, no. Really, no.

11 Q Then, the other side of the coin, I guess, is  
12 you are saying you do feel some prejudice against Mr. Creech?

13 A I would say so.

14 Q Do you find yourself with an inclination to believe  
15 that he is probably guilty of this offense because of -- partly  
16 because of what you've read about other states?

17 A Not necessarily, no.

18 Q Then, could you state what it is that is causing  
19 you to have a prejudice against Mr. Creech?

20 A I suppose publicity in the papers, the way they  
21 write them up. They write them pretty definite when they write  
22 them, you know.

23 MR. HOWER: Challenge for cause, Your Honor.

24 THE COURT: I'd like to have a little clarification.  
25 I understood you to say at first that even though you have

1     formed, at least some tentative opinions on what you have read  
2     and heard about this case, that you felt you could -- I thought  
3     you said be fair in any trial?

4             THE WITNESS: I believe that, yes, regardless. I'd  
5     have to hear the testimony, of course, but I can be fair, I'm  
6     sure of that.

7             THE COURT: You understand these things you read in the  
8     paper are not evidence?

9             THE WITNESS: That's right.

10            THE COURT: And it may even be worse than -- some of  
11     those things couldn't even be admitted into evidence; you  
12     understand that?

13            THE WITNESS: Um-hmm.

14            THE COURT: What I need to know is, do you feel in your  
15     own mind that you could lay aside that opinion you have  
16     tentatively formed from what you've read in the paper and  
17     render a verdict based solely on the evidence that's received  
18     here in court?

19            THE WITNESS: Yes, sir.

20            THE COURT: I want you to search your mind. I know  
21     that's a difficult question, but you are the only one that can  
22     really tell us about your ability to do this; to lay aside an  
23     opinion that may be there now and remove it completely and  
24     listen to the evidence here and make a decision based on the  
25     evidence. Now, do you feel you could do that?

1 THE WITNESS: Well, I feel I could be fair, but --

2 THE COURT: Let me turn it around just a little  
3 different way, and it gets to the same point. I know that's  
4 a difficult question and we appreciate your frankness here,  
5 Mr. West, and we don't want you to feel you are shirking your  
6 duty as a juror in any way in being perfectly honest about this.

7 You feel the way you feel right now that you'd  
8 have to have some evidence to indicate he was innocent until --  
9 to remove it or --

10 THE WITNESS: I'm afraid so.

11 THE COURT: The burden is sort of on him to prove he  
12 was innocent rather than on the State?

13 THE WITNESS: I believe so, yes.

14 THE COURT: All right, I'll grant the challenge. We  
15 appreciate your frankness, Mr. West.

16 We have another trial scheduled on June 5th at  
17 10:00 and you'll have to report then for another trial.

18 Thank you for your frankness.

19 THE CLERK: Carolyn Siens.  
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SHIRLEY H. BROWN,  
a prospective juror herein, having been duly sworn, took the  
stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Brown, we've asked you to come in here  
primarily for the purpose of discussing pretrial publicity;  
that is newspaper articles, radio, television broadcasts and  
papers, conversations that you may have overheard or  
participated in prior to today.

Now, have you followed this matter in the papers  
at all?

A Have I followed it?

Q Yes. Have you read about this case in the papers?

A I read it in the Bentley Star, I have not followed  
it in the Statesman.

Q And --

A And I have not watched the news.

Q -- and you have not watched the news?

So, you are coming into this, then, with an open  
mind; are you not?

A Well, yes.

Q You think you could be, then, fair and impartial  
and base your decision on the evidence that would be produced

1 in the courtroom?

2 A Yes.

3 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

4

5

VOIR DIRE EXAMINATION

6

BY MR. HOWER:

7

Q Mrs. Brown, have you engaged in any conversations touching upon the possible guilt or innocence of Mr. Creech?

9

A Only to my family, my husband is the only one, I believe I've talked to.

11

Q You haven't talked about the Creech case at all with anyone outside of your family?

13

A Not that I can recall.

14

Q Does your husband have an opinion as to whether Mr. Creech is probably guilty or not?

16

A Well, I'm sure he probably does.

17

Q Has he expressed that opinion to you?

18

A Well, not whether he's guilty or not; just his opinion as to whether he would like me to stay here or not is why it would influence his opinion.

21

Q Whether he would like what?

22

A Whether he would like for me to have to stay over here for the trial would be what would influence whether he would think he was guilty.

25

Q Does your husband -- do you feel, Mrs. Brown, that

1 this would involve any undue pressue upon you if you were  
2 involved as a juror in the case?

3 A. No.

4 Q. Have you ever expressed an opinion to your  
5 husband or anybody else as to whether you think Thomas Creech  
6 is guilty as charged?

7 A. No.

8 Q. You have not?

9 A. No.

10 Q. In the course of the conversations with your  
11 husband, Mrs. Brown, have you talked about the newspaper  
12 stories or the talk or the gossip that Mr. Creech may have  
13 committed crimes in other states besides Idaho?

14 A. Yes, my husband has said that he heard that he  
15 had committed crimes in other states.

16 Q. Does this give you an inclination, or an  
17 impression, Mrs. Brown, that he is more likely than not, guilty  
18 of the offense he's charged with here?

19 A. I don't know whether he's guilty or not.

20 MR. HOWER: I'll pass this juror for cause, Your Honor.

21 THE COURT: Mrs. Brown, we'd like to ask you to go down  
22 to the jury room now with the other jurors and not discuss with  
23 them the questions that were asked here.

24 THE WITNESS: Okay. Thank you.

25 THE CLERK: Claude Williams.

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CAROLYN SIENS,  
a prospective juror herein, having been duly sworn, took the  
stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Siens, you've been asked to come into the  
courtroom in the absence of other prospective jurors for the  
purpose of discussing pretrial publicity; by that I'm referring  
to newspaper publications, television and radio broadcasts and  
things of that nature.

Have you followed this in the daily papers?

A. I have read it, yes.

Q. You've read them in the last few days?

A. I haven't read today, but I read up until today.

Q. And you customarily watch the television news?

A. No, I never see television.

Q. And have you, bearing in mind that you have read  
the papers about this, I'm assuming you've overheard  
conversations about it?

A. Some, yes.

Q. And have these been conversations where the people  
have claimed to know any facts in the case?

A. No, they've been conversations where I'd catch a  
couple here and a little there due to the work that I do.

1 Q Now, bearing in mind the fact that you've heard  
2 portions of conversations and read something about this, do you  
3 think you could be fair and impartial in this case if you are  
4 chosen as a trial juror?

5 A I believe I could.

6 Q Could you base your opinion on the evidence that  
7 you would see and hear right here in the courtroom?

8 A Yes, I believe I could.

9 MR. REMAKLUS: Fine. I'm sure you could follow the  
10 Judge's instructions also.

11 We'll pass the juror for cause, Your Honor.

12 MR. HOWER: Pass for cause, Your Honor.

13 THE COURT: Mrs. Siens, if you'll go down to the jury  
14 room and wait with the other jurors that are down there, don't  
15 discuss the questions in here that have been had about this,  
16 please.

17 THE CLERK: Fred A. Clazacorta.  
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1 CLAUDE R. WILLIAMS,  
2 a prospective juror herein, having been duly sworn, took the  
3 stand and testified as follows:

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5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mr. Williams, you live at McCall?

8 A Um-hmm.

9 Q You've been asked to come in in the absence of  
10 other prospective jurors for a discussion of pretrial  
11 publicity; by this we're referring to newspaper publications,  
12 TV broadcasts, radio and the like.

13 Have you followed this case in the papers?

14 A Yes.

15 Q And do you have a television?

16 A Yeah.

17 Q Have you followed it on that?

18 A Yeah, as much as -- like on news and stuff, yeah.

19 Q In view of -- how long have you been following  
20 it?

21 A Well, since it was first brought to my knowledge,  
22 or when it first happened.

23 Q You think, if you are chosen as a juror in this,  
24 to try the case, that you could be fair and impartial?

25 A Oh, I think I was really subject to too much

1 publicity and too much of the case already. Of course, I  
2 don't know.

3 Q If you were to be instructed by the Judge, as I'm  
4 sure you would be, that you'd have to base your decision in  
5 this case solely on evidence produced here in the courtroom,  
6 could you follow the Judge's instructions?

7 A Oh, yes.

8 MR. REMAKLUS: I'll pass the juror for cause, Your Honor.

9  
10 VOIR DIRE EXAMINATION

11 BY MR. HOWER:

12 Q Mr. Williams, I gather you've heard or participated  
13 in quite a bit of discussion about this case?

14 A Yeah, I have.

15 Q In the course of this discussion, have you or the  
16 people you were talking with, touched upon the publicity to  
17 the effect that Mr. Creech may have committed crimes in other  
18 states besides Idaho?

19 A Yes, that's right.

20 Q Does the information you have on that subject  
21 tend to prejudice you against him and make you feel that he's  
22 more likely than not guilty --

23 A Yes, it does.

24 Q -- of the crimes here?

25 If you were selected as a juror in this case,

1 Mr. Williams, would you nevertheless do your utmost to be fair  
2 to Mr. Creech?

3 A. Yes.

4 Q. Would you consider it fair, Mr. Williams, that he  
5 be held to answer in this state for crimes that he may have  
6 committed in some other state?

7 A. Would it be fair for him to be put on trial here  
8 for other crimes? In other states?

9 Q. Yes.

10 A. No.

11 Q. Or to be prejudiced in any way --

12 A. No.

13 Q. -- during this trial here because of that?

14 You understand, Mr. Williams, that the talk you  
15 hear and what you read in the papers is not evidence?

16 A. Yes.

17 Q. Is it your honest feeling that you would be able  
18 to overcome whatever impressions you have and look at this  
19 matter afresh, solely on the basis of the evidence produced in  
20 court?

21 A. I really don't think I could look at it that fair.  
22 I think I do have some prejudices against him.

23 MR. HOWER: Thank you, Mr. Williams.

24 Challenge for cause.

25 THE COURT: All right, I'll grant the challenge.

1 Mr. Williams, we do have another trial scheduled  
2 on June 5th at 10:00. You'll have to report then.

3 Thank you for your frankness.

4 THE CLERK: Dwayne Allen.  
5

6 FRED A. CLAZACORTA,  
7 a prospective juror herein, having been duly sworn, took the  
8 stand and testified as follows:  
9

10 VOIR DIRE EXAMINATION

11 BY MR. REMAKLUS:

12 Q Mr. Clazacorta, you have been asked to come into  
13 the courtroom in the absence of the other prospective jurors  
14 to go into this matter of prefrial publicity and I'm referring  
15 to newspaper accounts, television, radio broadcasts,  
16 conversations and things of this nature.

17 Now, do you follow the daily paper?

18 A. I do.

19 Q. Have you read about this case in the Statesman?

20 A. I have.

21 Q. And you take the local weekly paper?

22 A. Yeah, I do.

23 Q. And I suppose you read about -- something about  
24 it in there; have you not?

25 A. I have.

1 Q And you watch television in the evenings?  
2 A Yeah, I do.  
3 Q Have you picked up the news broadcasts?  
4 A Yeah, sometimes.  
5 Q You think that keeping in mind the fact that you  
6 have read about this and heard about it on the television,  
7 bearing that in mind, if you are chosen as a juror here, could  
8 you be fair and impartial?  
9 A I don't believe I would, could.  
10 Q You think it takes some evidence to remove any  
11 question you have in your mind at this time?  
12 A Well, I believe I've got my opinion made up.  
13 MR. REMAKLUS: I have no further questions, Your Honor.  
14 MR. HOWER: Challenge for cause, Your Honor.  
15 THE COURT: I'd like to clarify one thing, Mr. Clazacorta.  
16 Apparently there's some particular things you've  
17 read or heard or seen on TV that has caused you to form this  
18 opinion. I appreciate it may be a collection of all of them, but  
19 are there any particular things that stand out in your mind that  
20 you've read or seen or heard that's caused you to form this  
21 opinion, fix it in your mind?  
22 THE WITNESS: Well, no, I don't know how to answer that  
23 to you.  
24 THE COURT: Well, what I'm trying to get at, there must  
25 be something that is causing you to have this opinion. I would

1 like to know for the record what it is specifically.

2 THE WITNESS: Well, this is just my feeling on this  
3 thing itself, I --

4 THE COURT: I'm not asking you to tell what your  
5 feeling is, I want to know how you got to that point that you  
6 have the opinion.

7 THE WITNESS: Oh, I guess news things and reading and  
8 things like that.

9 THE COURT: Any specific thing that you read or heard?

10 THE WITNESS: No.

11 THE COURT: Just generally all of it together?

12 THE WITNESS: Um-hmm.

13 THE COURT: Well, I'll grant the challenge.

14 You'll have to report for a trial on June the 5th  
15 at 10:00. Remember that date, Mr. Clazacorta.

16 THE CLERK: Shirley G. Allen.  
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1 DUANE PERRY ALLEN,  
2 a prospective juror herein, having been duly sworn, took the  
3 stand and testified as follows:  
4

5 VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mr. Allen, we've asked you to come into the  
8 courtroom to discuss pretrial publicity and I'm referring to  
9 newspaper accounts of the case, radio, television broadcasts and,  
10 possibly, conversations that you may have overheard or engaged  
11 in.

12 Now, do you -- have you followed this case in the  
13 daily paper?

14 A Slightly. I've read articles about it.

15 Q And has that been recently?

16 A Oh, couple days ago there was an article in the  
17 paper to mention they were going to have a trial and --

18 Q Now, your following it in the newspapers, has been,  
19 what, just hit and miss; would that be an accurate way to  
20 describe it?

21 A Yes.

22 Q You have television, Mr. Allen?

23 A Yes.

24 Q I assume you've seen this on television news?

25 A Yes, I've heard it mentioned on the news.

1 Q Um-hmm. Keeping it mind that you've read  
2 something about it and heard it in the news, if chosen as a  
3 juror, could you be fair and impartial here in this matter?

4 A Yes.

5 Q You'd follow the Judge's instructions as to the  
6 law and make up your mind as to evidence presented here in the  
7 courtroom?

8 A Yes.

9 MR. REMAKLUS: I'll pass the juror for cause,  
10 Your Honor.

11  
12 VOIR DIRE EXAMINATION

13 BY MR. HOWER:

14 Q Mr. Allen, you mentioned that you had read some  
15 recent news stories about this case. Have you read any  
16 newspaper stories several months old about it?

17 A Yes -- oh, it's been quite awhile back. I read  
18 articles that was published, just parts of it. I read the  
19 newspaper and that was part of it.

20 Q What's the gist of what you learned about  
21 Thomas Creech from those articles? What do you feel you know  
22 about him?

23 A Well, about him? Nothing, I mean, I read the  
24 articles, I believe some of them stated that he had -- him and  
25 a lady had been picked up and was held in custody by the

1 Sheriff here and I know the Sheriff here slightly, that was  
2 part of the interesting part; I was aligned with him and I read  
3 that he had been transferred to Boise and way back, another  
4 article about -- something about an airplane crash, or forced  
5 landing.

6 Q Do you recall how come Creech happened to be in  
7 the airplane; what he was doing in the airplane?

8 A As near as I remember about that, he was taken  
9 to California by the Sheriff's Department, or by -- I think  
10 they mentioned Ada County.

11 Q Do you know for what purpose?

12 A Not firsthand. Like I said, that was a part of  
13 -- somebody in a mine shaft or something like this.

14 Q Have you ever discussed this case at all with  
15 the Valley County Sheriff?

16 A No.

17 Q Never a bit?

18 A No.

19 Q Mr. Allen, do you accept as probably true since  
20 you read it in the paper, that Mr. Creech was involved in a  
21 plane crash; that is, a forced landing. Do you believe he  
22 really was there on the plane when it landed?

23 A I probably believed it when I read it. It  
24 wasn't proven to me, just something I read.

25 Q Do you attach the same degree of probability

1 to that part of the story which said he was in California  
2 looking for bodies in a mine shaft?

3 A. Since I have no other way of knowing, it was  
4 something I read, I probably -- that he was taken down there, I  
5 mean, this is -- I have no reason not to believe it, just to  
6 determine how much is true or not. I don't think I read it for  
7 knowledge, entertainment like most of the paper.

8 I have no way of knowing how true or untrue it  
9 is unless I know something.

10 Q. Do you remember from the story you read,  
11 Mr. Allen, whether or not the story reported that bodies were  
12 found; or that bodies were not found?

13 A. Oh, I believe that -- as I remember the story,  
14 the bodies were not found.

15 Q. You remember the story pretty well?

16 A. That was one of the latest ones and since this  
17 last trial has had quite a bit of publicity, like I say, that  
18 was one of the recent ones that I had read.

19 Q. Okay. Mr. Allen, bearing in mind that you can't  
20 live in Valley County, you can't live here the past several  
21 months without having heard about the Creech case --

22 A. Um-hmm.

23 Q. -- do you have any problems with your  
24 conscience about being a juror in this case?

25 A. I don't think so.

1 Q You don't feel that you've made a judgment;  
2 that you've foreclosed consideration of the evidence?

3 A No, because, like I say, I haven't heard any  
4 evidence.

5 Q Are you able to entertain in your mind the  
6 real possibility, in spite of everything you've heard and  
7 read, that Mr. Creech may be innocent of the crime charged?

8 Are you able to entertain that as a real  
9 possibility?

10 A I think it's a possibility.

11 Q If the Judge instructs you that the burden of  
12 proof is upon the State and that they must prove his guilt  
13 by evidence presented in this court, could you base your  
14 decision solely on that evidence when the time comes and  
15 exclude from your mind considerations of what you may have  
16 heard or read before the trial started?

17 A I don't think it's possible to exclude from a  
18 person's mind anything that they've heard in their lifetime  
19 and remember it all. I think I could obey the Judge's  
20 instructions.

21 Q I phrased the question badly, Mr. Allen. You  
22 can't exclude it from your mind, but can you exclude it from  
23 being the basis for your decision?

24 A I think so.

25 Q You think you can do that?

1 I pass this juror for cause.

2 THE COURT: Mr. Allen, if you will go down in the  
3 jury room. Do not discuss what you have been questioned  
4 about here with the other jurors.

5 THE WITNESS: All right, sir.

6 THE CLERK: Chester Matthews.

7  
8 SHIRLEY G. ALLEN,  
9 a prospective juror herein, being first duly sworn, took the  
10 stand and testified as follows:

11  
12 VOIR DIRE EXAMINATION

13 BY MR. REMAKLUS:

14 Q Mrs. Allen, you've been asked to come into the  
15 courtroom to discuss the matter of pretrial publicity and I'm  
16 having reference to newspaper articles, television broadcasts,  
17 radio broadcasts; things of that nature.

18 Bearing that in mind, I have a few questions  
19 I'd like to ask you.

20 Do you follow -- have you followed this case  
21 in the papers?

22 A Yes, I have.

23 Q And how recently?

24 A Well, since it was started and up to this last  
25 evening.

1 Q And you folks have a television set; do you not?

2 A Yes.

3 Q Have you picked up the news broadcasts?

4 A Yes, I have.

5 Q And as a result of following this in the paper  
6 and hearing news broadcasts about it, if you are chosen as a  
7 juror, do you think you could be fair and impartial in this  
8 matter?

9 A I'm not sure.

10 Q Let me put it this way, Mrs. Allen. If you  
11 were chosen as a juror and you are instructed by the Judge  
12 to base your decision solely upon the evidence that would be  
13 produced in this courtroom, could you do that?

14 A Yes.

15 Q You think you can be fair and impartial to the  
16 State and to the defendant in that regard?

17 A Yes.

18 MR. REMAKLUS: I'll pass the juror for cause,  
19 Your Honor.

20 MR. HOWER: Pass for cause, Your Honor.

21 THE COURT: I'd just like to ask you one question,  
22 probably tie it down one more notch, if we can.

23 There is a principle of law, it's a very  
24 serious principle and important principle. If --a defendant  
25 is always presumed to be innocent until he is proven guilty

1 beyond a reasonable doubt, you probably heard that before and  
2 understand that.

3 I just want to know, have you searched your  
4 -- can you search your mind and tell me whether, in view of  
5 the things you've heard about the case and read about it,  
6 whether it's possible for you, you feel, you can actually  
7 accept that wholeheartedly and without reservation; that  
8 presumption of innocence? Can you seriously entertain and  
9 accept the belief that the defendant is innocent as he sits  
10 here today?

11 THE WITNESS: Yeah, I think so.

12 THE COURT: You want to ask any further questions?

13 MR. HOWER: No.

14 THE COURT: All right. We'll ask you to go down,  
15 Mrs. Allen, to the jury room and not back to the VFW Hall,  
16 down at the jury room and not discuss the matter with the  
17 other jurors that we've talked to.

18 THE WITNESS: Is there any way to explain that I'd  
19 rather not do this?

20 THE COURT: Until -- well, we could if you have  
21 some matters that really create a hardship, we can certainly  
22 entertain that; not just a --

23 THE WITNESS: It just, really, would be a problem  
24 to come down for any length of time and I know it is my duty,  
25 but I --

1 THE COURT: That's the reason --

2 THE WITNESS: Certainly --

3 THE COURT: That's the reason we select juries, if  
4 you'd just rather not, we'd have to give up, not get a jury  
5 if everybody didn't want to serve.

6 But, if it is, really, a hardship, I can  
7 entertain that problem. Tell us what the problem is.

8 THE WITNESS: I just have a son at home by himself,  
9 my husband is out of town and it's --

10 THE COURT: How old is your son?

11 THE WITNESS: He's sixteen. I don't know which is  
12 worse; whether you are three or sixteen.

13 THE COURT: Do you have other family around close?

14 THE WITNESS: No.

15 THE COURT: Close neighbors or friends? Where do  
16 you live?

17 THE WITNESS: In McCall.

18 THE COURT: Right in the city?

19 THE WITNESS: Yes, um-hmm.

20 THE COURT: Do you have any neighbors or friends  
21 that you could -- he could stay with while you are down here  
22 if you were picked on the jury?

23 THE WITNESS: Oh, I suppose, you know, if it really  
24 came to that.

25 THE COURT: Counsel want to ask questions in that

1 light?

2 Mr. Hower?

3 MR. HOWER: Mrs. Allen, if it really comes to that,  
4 you can afford to employ a babysitter; can you not?

5 THE WITNESS: It is not, really, a case of  
6 babysitter for a 16-year-old, it's just that I -- and I do  
7 have a small business that takes up quite a bit of my time  
8 and, as I say, I'm no different than anyone else. Everybody  
9 has a problem.

10 MR. HOWER: To employ a babysitter for a  
11 16-year-old, you'd have to be very careful.

12 THE WITNESS: Right.

13 THE COURT: Do you have any questions?

14 MR. REMAKLUS: No, I have no further questions,  
15 Your Honor. Thank you.

16 THE COURT: I must ask you one more time, do you  
17 feel that this natural concern, which we all recognize, for  
18 a 16-year-old at home fending for himself while you are down  
19 here on this case for several days, do you think that would  
20 distract you to the point that you couldn't concentrate on  
21 the evidence and really listen to it and give it your serious  
22 attention? I think that's --

23 THE WITNESS: I think to a certain degree because  
24 you do get stretched between two places, you know, that you  
25 feel very obligated to both and I'd certainly want to be fair.

1 THE COURT: You feel that you couldn't really?  
2 It would really interfere with your concentration on the case?  
3 THE WITNESS: Possibly.  
4 THE COURT: Well, I think I'll excuse Mrs. Allen on  
5 that basis.  
6 MR. REMAKLUS: Fine.  
7 MR. HOWER: I suppose Counsel has no standing to  
8 protest the excusing of the prospective juror?  
9 THE COURT: Yes. I'm not excusing because of the  
10 hardship, I'm excusing here because what she expressed about,  
11 perhaps, inability to really seriously concentrate on the  
12 evidence and I think the hardship itself is not -- with a  
13 16-year-old and ability to, perhaps, get a neighbor is not  
14 sufficient grounds itself. If you are willing to accept the  
15 reservation she has about being able to -- about the possible  
16 distraction worrying about this.  
17 MR. HOWER: Your Honor, it's difficult because I  
18 run the risk, of course, that what I say may stipulate some  
19 slight degree of prejudice against me or my client, but I  
20 think that, if Mrs. Allen is unwilling to serve on this jury  
21 then that we're in some trouble.  
22 All of us here know her, we know she's  
23 intelligent and she said she's not prejudiced. So far as the  
24 matters that we're inquiring into here, she's competent to  
25 serve as a juror and I think I will only express the wish

1       that the Court would encourage her a little more than it has  
2       to do her duty.

3               THE COURT: Well, as I say, I'm not excusing her  
4       because -- because I think we would have to excuse, probably,  
5       a big multitude of jurors that had hardships along --

6               THE WITNESS: I understand that.

7               THE COURT: But, no, that's all right, Mr. Hower,  
8       if you are willing to -- I think she's been very, very  
9       frank with us and I just felt that because of her  
10      reservation, ability to not be distracted by this worry, if  
11      you are willing to accept that, I am too. So --

12              MR. HOWER: Your Honor, I'm far more willing to  
13      accept Mrs. Allen with her reservations because I am  
14      confident that she would be a fair juror; far more than I  
15      would be with people who say, "No, I haven't heard about  
16      this case, I have no feelings about it, I'm happy to be on  
17      the jury."

18              I have no reservations whatever about  
19      accepting Mrs. Allen.

20              THE COURT: Well, we'll ask you to stay, then,  
21      Mrs. Allen. If you'll go downstairs in the jury room and not  
22      discuss any of the questioning about this.

23              THE WITNESS: Thank you.

24              THE CLERK: Beth Phillips.

25

1 CHESTER MATTHEWS,  
2 a prospective juror herein, having been first duly sworn,  
3 took the stand and testified as follows:  
4  
5 VOIR DIRE EXAMINATION  
6 BY MR. REMAKLUS:  
7 Q Mr. Matthews, you've been asked to come into  
8 the courtroom at this time to take up the matter of pretrial  
9 publicity and by that I'm referring to newspaper articles,  
10 television broadcasts, radio broadcasts and things of that  
11 nature.  
12 A Um-hmm.  
13 Q Now, have you had occasion to follow this  
14 case in the papers?  
15 A Yes, I've read it all the way through, followed  
16 it.  
17 Q You have a TV set, Mr. Matthews?  
18 A Yup, you bet.  
19 Q Have you followed the news?  
20 A (No audible response.)  
21 Q And have you had any conversations with  
22 anybody about this matter?  
23 A Oh, yes, lots of times.  
24 Q Have they purported to know the facts of the  
25 case?

1           A.     Well, I don't know whether they knew, but just  
2 talking, that's all. I couldn't say any of them ever knew what  
3 they was talking about.

4           Q.     Um-hmm. Now, without asking you what kind of  
5 an opinion they may have expressed, I would ask you if people  
6 with whom you have discussed this; have they stated an opinion  
7 as to guilt or innocence?

8           A.     Yes.

9           Q.     Has this caused you to have an opinion in this  
10 matter?

11          A.     Yes.

12          Q.     Would it take evidence at the outset here to  
13 change your opinion, Mr. Matthews?

14          A.     Well, I don't know, I guess the right kind of  
15 evidence would, but that's all.

16          Q.     You think you have your mind made up in this  
17 matter?

18          A.     I think I do. Besides, I want to tell you now  
19 that I can't -- I've got to have my breathing machine wherever  
20 I go, about four times a day.

21          Q.     You have some emphysema --

22          A.     Yes.

23          Q.     -- Mr. Matthews?

24          A.     And my wife is liable to have to go to the  
25 hospital any time for oxygen, but --

1 MR. REMAKLUS: I'd ask that Mr. Matthews be excused  
2 for cause, Your Honor.

3 THE COURT: Any exception, Mr. Hower?

4 MR. HOWER: No, Your Honor.

5 THE COURT: Mr. Matthews, we'll excuse you, then, and  
6 I think in view of your health problem we'll excuse you  
7 permanently from the further service. We do have another trial  
8 scheduled on June the 5th, but I won't ask you to return for  
9 that.

10 THE WITNESS: Thank you, Your Honor.

11 THE CLERK: Sharon Gibbens.

12

13 BETH PHILLIPS,

14 a prospective juror herein, having been first duly sworn,  
15 took the stand and testified as follows:

16

17 VOIR DIRE EXAMINATION

18 BY MR. REMAKLUS:

19 Q Mrs. Phillips, you've been asked to come into the  
20 courtroom individually to discuss pretrial publicity; by this  
21 I'm referring to newspaper accounts of the trial, television,  
22 radio broadcasts, conversations that you may have overheard or  
23 participated in.

24 Now, all of us know here, I'm sure, that you  
25 work here in the courthouse and been Deputy Assessor for many

1 years.

2 Have you heard -- have you followed this in the  
3 papers?

4 A. Yes, I have.

5 Q. And have you checked the radio broadcasts or  
6 the television broadcasts in the news and customarily listen to  
7 the radio in the mornings?

8 A. Yes.

9 Q. Have you heard news broadcasts about this?

10 A. Yes.

11 Q. And how about TV in the evenings? Have you seen  
12 the TV broadcasts?

13 A. Yes.

14 Q. Bearing in mind -- have you heard it discussed  
15 out in the office?

16 A. Yes.

17 Q. Have you heard it discussed by people who  
18 purport to know the facts of it?

19 A. Yes.

20 Q. Have you formed an opinion --

21 A. Yes.

22 Q. -- in that matter?

23 A. Yes.

24 Q. Have you?

25 A. Yes.

1 MR. REMAKLUS: I would ask that Mrs. Phillips be  
2 excused.

3 THE COURT: Any exception?

4 MR. HOWER: No exception.

5 THE COURT: Like to ask just one question for  
6 clarification for the record here and find out what the basis  
7 for your opinion is. I don't want you to state your opinion,  
8 your understanding, Mrs. Phillips.

9 I would like to know whether there's any  
10 specific thing you read or heard about the case that stands  
11 out in your mind that's causing you to have whatever opinion  
12 it is you have.

13 THE WITNESS: Yes.

14 THE COURT: What is that? Can you tell me what it is  
15 specifically that you read or heard that's causing you to have  
16 that opinion?

17 THE WITNESS: How do I do this without telling you  
18 my opinion.

19 THE COURT: Well, apparently -- were these facts that  
20 you read?

21 THE WITNESS: Yes.

22 THE COURT: Well, I'd just like to know what the  
23 facts are; that doesn't involve stating what they are, I  
24 might be able to judge what your opinion is, but, what facts  
25 have you read that stands out in your mind that's causing you

1 to have an opinion?

2 THE WITNESS: I've read all the news stories covering  
3 the situation.

4 THE COURT: Well, what I want to know is whether there  
5 is just a vague opinion or whether you have some specific facts  
6 in mind.

7 THE WITNESS: I don't really understand what you want  
8 me to say.

9 THE COURT: I'd like you to tell me what you've  
10 read.

11 THE WITNESS: Well, I read the stories in the paper,  
12 I think everybody else has.

13 THE COURT: What did the stories say that's caused  
14 you to have the opinion?

15 THE WITNESS: I still don't know how to tell you  
16 without telling -- you mean --

17 THE COURT: Tell us your opinion, then, if you have  
18 to. I still want to know what the facts are you've read.

19 THE WITNESS: Well, the facts that they were picked  
20 up with blood on their clothes, they were in the area.

21 THE COURT: Any other facts?

22 THE WITNESS: That's the most important.

23 THE COURT: That's the most important?

24 MR. REMAKLUS: Your Honor, might I ask another  
25 question that may be of some aid to the Court?

1 THE COURT: Yes.

2

3 FURTHER VOIR DIRE EXAMINATION

4 BY MR. REMAKLUS:

5 Q Mrs. Phillips, since you worked here in the  
6 courthouse for many years, have you had a chance -- have you  
7 discussed this with any members of the Sheriff's force,  
8 Deputy Sheriffs?

9 A Yes.

10 Q And these conversations, of course, would also  
11 add to your opinion; isn't that right?

12 A Yes.

13 THE COURT: All right, we'll excuse you, then,  
14 Mrs. Phillips.

15 You'll have to report again on June 5th at  
16 10:00 for another trial that's scheduled.

17 THE CLERK: Wilma Murphy.

18

19 SHARON J. GIBBENS,

20 a prospective juror herein, having been first duly sworn,  
21 took the stand and testified as follows:

22

23 VOIR DIRE EXAMINATION

24 BY MR. REMAKLUS:

25 Q Mrs. Gibbens?

1 A. Yes.

2 Q We've asked you to come into the courtroom to

3 discuss the matter of pretrial publicity; having reference to

4 newspaper articles, television and radio broadcasts and

5 conversations, perhaps, that you have overheard or engaged in.

6 We're going to limit our questions to you to

7 this area.

8 Have you followed this matter in the newspapers?

9 A. Yeah.

10 Q And you folks have a television set?

11 A. Yes.

12 Q Have you followed -- have you heard radio and

13 TV broadcasts about it?

14 A. When it was going on I did.

15 Q And have you talked to other folks about this?

16 A. Oh, I'm sure I have.

17 Q Have you read the papers recently?

18 A. I didn't really recall reading anything about it

19 lately, no.

20 Q You think that if you are called to be a juror

21 in this matter that you could be fair and impartial and

22 base your decision on the evidence that you would see and hear

23 right here in the courtroom?

24 A. I really don't know. I couldn't answer you one

25 way or the other.

1 Q If you were to be instructed by the Judge that,  
2 as a juror, you must make your decision based upon the  
3 evidence here in the courtroom, could you follow that  
4 instruction?

5 A I think I could.

6 Q And in view of your -- your stated ability to  
7 follow the Judge's instructions, and you feel you could be  
8 fair to the State and to the defendant?

9 A I really don't know. I just feel I couldn't  
10 answer you on that.

11 Q I think you stated that you hadn't read the  
12 papers?

13 A Not lately, no, I haven't seen anything.

14 MR. REMAKLUS: I have no further questions. I pass  
15 the juror for cause.

16

17 VOIR DIRE EXAMINATION

18 BY MR. HOWER:

19 Q Mrs. Gibbens, I expect you've heard the  
20 statement that in the law a person accused of a crime is  
21 entitled to a presumption of innocence until his guilt is  
22 proved.

23 A Yes.

24 Q If you were instructed to that effect by the  
25 Judge, and if you were further instructed that his guilt must

1 be proved by evidence presented in this court starting with  
2 a clean slate and clean start so far as your impressions and  
3 convictions are concerned; I'm not asking you whether you could  
4 erase from your memory everything you have heard or read or  
5 talked about the case, we know it's going to be there. But,  
6 I'm asking you whether you can just judge this matter fairly,  
7 based upon the evidence even though it is there?

8 A. I don't think so. I couldn't answer you one  
9 way or the other because I'm not sure in my own mind if I  
10 could or not.

11 Q. If you are left on the jury, Mrs. Gibbens, will  
12 you try?

13 A. I'm sure I would try, yes.

14 MR. HOWER: Pass for cause, Your Honor.

15 THE COURT: We'll ask you to go downstairs in the  
16 jury room now rather than out -- back to the VFW Hall.

17 Don't discuss with the other jurors what you've  
18 been questioned about here.

19 THE CLERK: Martha Noyes.  
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WILMA MURPHY,  
a prospective juror herein, having been first duly sworn,  
took the stand and testified as follows:

VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Murphy, the purpose of asking you to come into the courtroom at this time is to discuss pretrial publicity; I'm referring to newspaper accounts of this matter, radio and television broadcasts and, possibly, any conversations that you may have had, overheard or participated in.

Also I'd like for the Court to know that Mrs. Murphy was an employee of mine some several years ago and that she called me on the telephone the other night with reference to questions about being selected on a jury and she asked me if she would have an opportunity to ask the Court questions with reference to being on the jury.

If Your Honor would permit that at this time, I think we should take it up.

THE COURT: Yes, you can ask the questions. I won't promise that you are -- that I'll answer it.

THE WITNESS: If I remember correctly, the two main questions I had was, is it permissible, provided you are chosen as a jury member, to take notes during the testimony;

1 not to be discussed until the case would be submitted. But,  
2 would you be allowed to take notes for your own reference?

3 THE COURT: Yes, I think that's -- you will be  
4 admonished as you have been not to discuss the case with other  
5 jurors until it's fully submitted to you. But, for your own  
6 use in refreshing your memory and keeping track of things,  
7 you could take notes.

8 THE WITNESS: And I think the other thing that I was  
9 primarily interested in and I hope I'm not asking too soon,  
10 but it was a matter of should you be chosen, would you have  
11 time to go home and pack.

12 THE COURT: It sort of depends upon the timing, but  
13 you would have to pack and I would have to give you that  
14 opportunity.

15 I'll put it to you this way: The jury is  
16 sworn to try the cause then you can no longer be separated,  
17 I mean in terms of going home, at least.

18 But, before you are actually sworn it is  
19 possible that you separate and, as long as you don't discuss  
20 the case. So, we will have to give you some opportunity for  
21 that. If we are close enough tonight to know, at least  
22 within a few jurors who they are going to be, we might ask  
23 you to come back tomorrow morning. I just can't tell you.

24 THE WITNESS: What I meant was, for example, if it  
25 should go, say, that right now and it's about -- not quite

1 3:00; that there's time to start proceedings so, I mean, that  
2 would be it, we couldn't go home?

3 THE COURT: No, we'd have to give you that  
4 opportunity.

5 THE WITNESS: I see. I believe that was it.

6 MR. REMAKLUS: I recall one other thing,  
7 Mrs. Murphy, and it was with reference to selection of a jury  
8 foreman and I don't remember what your question was.

9 THE WITNESS: Oh, yes, that's correct.

10 It sounds kind of dumb to me, now, but the  
11 question was, if a foreman is selected and you definitely  
12 object, is -- do you have an alternative in any way?

13 THE COURT: Well, I'm not going to tell you how to  
14 pick a foreman. All I'm going to say is, you have to select  
15 one and how the jurors agree on that is something that they  
16 will control and I wouldn't be able to control it.

17 I can only tell you that you will have to  
18 exercise your independent opinion and vote your conscience  
19 in the jury room and the foreman won't be able to control  
20 you in any way in that respect.

21 You see, you'll still have -- you'll still have  
22 to vote your conscience and make an independent decision  
23 regardless of what the foreman may want. That's all I can  
24 tell you.

25 I'm not going to give you the details on how to

1 pick a foreman and try to control that.

2 THE WITNESS: Thank you.

3

4 VOIR DIRE EXAMINATION (Continued)

5 BY MR. REMAKLUS:

6 Q Mrs. Murphy, have you followed this matter in  
7 the papers?

8 A More or less. I have heard about it, read  
9 about it.

10 Q Have you followed -- you have, I take it, from  
11 that, that you haven't made any particular point in following  
12 the Creech case in the papers?

13 A That's correct.

14 Q How about the television broadcasts or radio  
15 news?

16 A The same applies. I've heard it, but I didn't  
17 make a point of it.

18 Q Now, in your work there at the bank, I suppose  
19 you likely have heard it discussed; have you not?

20 A Yes.

21 Q And I'm assuming that these have been casual  
22 conversations?

23 A Correct.

24 Q Now, bearing in mind that you do -- have heard  
25 about it and so on, if you are selected here as a juror, you

1 could be fair and impartial to the State and to the defendant,  
2 both, I'm sure; could you not?

3 A. To the best of my knowledge I believe I can.

4 Q. The Judge, I'm sure, would instruct you that your  
5 decision would have to be based on the evidence that would be  
6 produced here in the courtroom and you could follow that  
7 instruction, could you not, Mrs. Murphy?

8 A. I believe so.

9 MR. REMAKLUS: I'll pass the juror for cause,  
10 Your Honor.

11 MR. HOWER: Your Honor, is voir dire examination  
12 subject to an objection that the witness is being led by  
13 Counsel?

14 THE COURT: No, I think not.

15

16 VOIR DIRE EXAMINATION

17 BY MR. HOWER:

18 Q. Mrs. Murphy, how long has it been since you have  
19 worked for Mr. Remaklus?

20 A. Almost five years.

21 Q. Have you discussed this specific case, the  
22 Creech case, with him or with any member of his -- employees of  
23 his or member of his staff since it came up?

24 A. Nothing other than the questions that he  
25 mentioned from the other night.

1           Q     Mr. Remaklus elicited from you the answers that  
2     you didn't make a point of reading about the Creech case in the  
3     papers, but you did read about it; did you not?

4           A     Yes.

5           Q     Do you recall, Mrs. Murphy, if you read the  
6     specific stories in the Idaho Statesman that appeared yesterday,  
7     the day before and this morning?

8           A     Not this morning, yesterday and day before, yes.

9           Q     You did read those?

10          A     Yes.

11          Q     Yes. You have read stories, several stories in  
12     the press; have you not, about charges, or possibility or  
13     investigations of crimes in other states alleged to have  
14     been committed by Mr. Creech?

15          A     Yes.

16          Q     Did you read a story in the Statesman,  
17     Mrs. Murphy, about Mr. Creech's treatment and release from a  
18     mental institution in the State of Oregon?

19          A     I can't say what state, but I do recall reading  
20     something to that effect.

21          Q     Now, in your words, to what effect was it the  
22     something that you read?

23          A     Well, I'm not sure I --

24          Q     What's your best recollection of what you did  
25     read about Mr. Creech and a mental institution in another state?

1           A.    He had been in an institution and he had been  
2 released.

3           Q.    Do you have any recollection as to what time these  
4 events happened?

5           A.    No.

6           Q.    Mrs. Murphy, in the course of conversations about  
7 the Creech case at the bank or elsewhere, have any people with  
8 whom you are closely associated in your work; that is employees  
9 of the bank or your employers at the bank, have you ever heard  
10 any of them express an opinion as to Creech's probable guilt or  
11 innocence or what should be done with him, or how he should be  
12 treated or anything bearing upon the disposition of the  
13 Creech case?

14          A.    You would include by this, just a remark that  
15 someone might say which could be taken as that's what they  
16 think?

17          Q.    Yes.

18          A.    Yes.

19          Q.    Were these opinions hostile, adverse to Mr. Creech?

20          A.    Yes.

21          Q.    Have you ever expressed to any person such an  
22 opinion yourself?

23          A.    No.

24          Q.    Do you have any such opinion yourself?

25          A.    No.

1 Q Is it your statement, Mrs. Murphy, that at this  
2 moment you have an absolutely open mind as far as Mr. Creech's  
3 guilt or innocence is concerned?

4 A May I answer that other than a direct yes or no?

5 Q Yes, please do feel free to explain your feelings  
6 as best you can.

7 A I feel that the importance of the duties of a  
8 juror that you have no rights to any opinions no matter where  
9 they come from until you hear testimony; which is what your  
10 decision is to be based on and for that reason and with that  
11 in mind I do not have an opinion because I don't know any facts.

12 MR. HOWER: Your years in a law office, Mrs. Murphy,  
13 were not wasted.

14 Pass for cause, Your Honor.

15 THE COURT: We'll ask you to go down to the jury room  
16 downstairs and not back to the VFW Hall.

17 We'll take a ten-minute recess. Don't discuss  
18 what you've been questioned about with the other jurors.

19 (Recess taken.)

20 THE COURT: I would propose at this time bringing up  
21 all 12 of the jurors that have now been passed on the pretrial  
22 publicity and let you examine them for cause on all grounds.

23 MR. HOWER: Could we take a moment, Your Honor, and  
24 be sure we have their names straight?

25 THE COURT: I'll go over the names as you bring them

1 up because I want them to sit in the order which I have.

2 MR. REMAKLUS: Your Honor, are we going to select some  
3 alternate jurors in this matter?

4 THE COURT: Yes, but not until we have the 12  
5 regular ones selected.

6 MR. REMAKLUS: Fine, thank you.

7 THE COURT: Bring up the -- now, we have  
8 Martha Noyes standing by. Just keep her out of the courtroom.

9 MR. REMAKLUS: Her name would be going back into the  
10 box to be selected at random if she was excused for cause,  
11 would she not?

12 THE COURT: Is that what you want? She has been  
13 drawn.

14 MR. HOWER: Yes.

15 MR. REMAKLUS: I think that their names should be  
16 back into the jury box.

17 THE COURT: All right. Put her name back in.

18 (Whereupon the 12 prospective jurors re-entered  
19 the courtroom and took their seats in the jury box.)

20 THE COURT: All right, Counsel will now have the right  
21 to examine each of you for cause on other matters than have  
22 already been discussed with you.

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DOROTHY M. BASY,  
a prospective juror herein, having been first duly sworn,  
testified further as follows:

FURTHER VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Basy, I have some more questions that I  
would like to ask you and I'm going to try not to talk about  
things that we talked about before. But, if I do, why, it will  
be unintentional.

You and Mr. Basy run the store at McCall; do you  
not?

A Yes, we do.

Q And is that a kind of a husband and wife  
operation; where you work regularly?

A Yes, sir.

Q And I see you have three children at home?

A Yes, sir.

Q And do you work a regular shift in the store?

A I work a couple of hours in the daytime and,  
then, I work from five to eight in the evening.

Q Now, does the -- are you acquainted with  
Mr. Hower?

A No, I'm not.

Q So, do you know whether or not the

1 attorney-client relationship would exist between Mr. Basy and  
2 Mr. Hower?

3 A. No, sir, I don't think there is.

4 Q. You would be apt to know it, wouldn't you?

5 A. Yes.

6 Q. Now, the attorney-client relationship does not  
7 exist between my office and your family; does it?

8 A. No.

9 Q. Have you -- let's see, you have not served on a  
10 jury before?

11 A. I did last week.

12 Q. And do you remember what kind of a case that  
13 was?

14 A. It was a civil case.

15 Q. Well, the -- some of the duties of a juror,  
16 then, are fresh in your mind; aren't they?

17 A. Yes, they are.

18 Q. You know that the Judge will explain to you what  
19 the law is and that you have to accept what the Judge says as  
20 being the law; regardless of what your private personal  
21 opinion might be in this case?

22 A. Yes.

23 Q. Now, since this is a case involving a death  
24 penalty, you think that you could do that in this case?

25 A. I believe in the death penalty.

1 Q Now, if the evidence in this case would convince  
2 you beyond a reasonable doubt that the defendant is in fact  
3 guilty, could you bring in a guilty verdict?

4 A I don't know.

5 Q Do you have reservations, then, about  
6 capital punishment?

7 A I don't have reservations about capital  
8 punishment. I believe in it. But, I don't know if -- I don't  
9 know.

10 Q I would like to -- I don't want to embarrass  
11 you or anything like that.

12 A That's all right.

13 Q But, could you state what your reservations  
14 are, or what you mean?

15 A Like I told you previously, I just don't feel  
16 that I'm capable of judging another person, especially his  
17 life. I don't know if I could do it or not.

18 Q Do you think that --

19 A If --

20 Q Please proceed.

21 A If I were 100 per cent sure, I -- if I were  
22 100 per cent sure I think -- I don't know.

23 Q Well, let me ask you --

24 A That's really hard.

25 Q Do you think that the fact that this is a

1 capital case, then, would interfere with your independent  
2 judgment in determining a verdict of guilty or innocence?

3 A. No.

4 Q. If, at the conclusion of the evidence in this  
5 case, you were disposed to vote guilty, would you let the  
6 imposition of the -- or the capital punishment aspect  
7 interfere with your voting guilty in this case?

8 A. No.

9 MR. REMAKLUS: We'll pass the juror for cause.

10  
11 FURTHER VOIR DIRE EXAMINATION

12 BY MR. HOWER:

13 Q. Mrs. Basy, are you aware of any strong and  
14 fairly consistent pattern of feeling about the case among your  
15 customers in the store?

16 A. I don't understand. What people have said to  
17 me?

18 Q. Yes.

19 A. I've had things said to me, yes. You mean how  
20 do I feel about it?

21 Q. No, are you aware that your customers,  
22 generally speaking, feel rather strongly about it?

23 A. Yes.

24 Q. Do you think, Mrs. Basy, that if you were on  
25 this jury and the jury acquitted the defendant, that this

1 would injure your business?

2 A. No, I don't think it would.

3 MR. HOWER: Pass for cause, Your Honor.

4

5

EARL F. DODDS,

6

a prospective juror herein, having been first duly sworn,

7

testified further as follows:

8

9

FURTHER VOIR DIRE EXAMINATION

10

BY MR. REMAKLUS:

11

Q Mr. Dodds, have you been a juror before?

12

A. No, I haven't.

13

Q Now, if you are selected here as a juror, you

14

will determine guilt or innocence; that will be your function

15

as a juror.

16

Now, in your determinations, or at the end of

17

the presentation of evidence, the Judge will instruct you as

18

to what the law is and what the law is as pertains to this

19

case and you must follow his instructions as to what the law

20

is. Do you understand that, Mr. Dodds?

21

A. Yes, I do.

22

Q And you, as the trier of the facts, would then

23

determine the fact of guilt or innocence herein.

24

Now, you have lived at McCall for a number of

25

years; haven't you?

1 A. That is right.

2 Q. Yes. Does the attorney-client relationship  
3 exist between you and Mr. Hower?

4 A. Yes, it has.

5 Q. It has, but does it now, Mr. Dodds?

6 A. No, I think the last time was in November of  
7 '74; last November.

8 Q. So far as you know, your attorney-client  
9 relationship concluded? Is there anything pending now?

10 A. No, there's not.

11 Q. Is there anything in your relationship to  
12 Mr. Hower that would make it impossible for you to be fair  
13 and impartial in this matter?

14 A. No, there's not.

15 Q. Now, there is no attorney-client relationship  
16 between your office and mine?

17 A. That's correct.

18 Q. And I am assuming that there is no social  
19 relationship between you and Mr. Hower; is that correct?

20 A. That's correct.

21 Q. Mr. Dodds, you are aware, at least at this  
22 point, that this is a case involving capital punishment?

23 A. I am.

24 Q. Do you have a reservation, or a state of mind,  
25 concerning capital punishment that would interfere with your

1 duty as a juror in this case?

2 A. No, I don't.

3 Q You feel that you could render your decision  
4 fairly and impartially; based on the evidence that will be  
5 produced in this room?

6 A. Yes, I do.

7 Q I don't know whether or not you may have read  
8 that the question of the finalities of the death penalty is  
9 before the U.S. Supreme Court determination. Have you read  
10 anything about that?

11 A. Yes, I've read about that.

12 Q And the fact that it's there being considered  
13 by that Court; would that make any difference to you in your  
14 deliberations?

15 A. No, it wouldn't.

16 Q So far as you are concerned, then, in this  
17 case the State of Idaho and Mr. Creech, or the defendant,  
18 are going to start out even and you'll base your opinion on  
19 facts to be adduced presented here in the courtroom?

20 A. Yes, sir.

21 MR. REMAKLUS: I think we'll pass the juror for  
22 cause.

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FURTHER VOIR DIRE EXAMINATION

BY MR. HOWER:

Q. Mr. Dodds, are you in any way uneasy about possible repercussions at your job? Any kind of hostility if you should sit on this jury and render a decision based on the evidence you hear in this courtroom which might be unpopular to people who haven't heard that evidence?

A. No, I'm not at all uneasy about that.

MR. HOWER: Pass for cause, Your Honor.

JACK DOUGLAS YENSEN,

a prospective juror herein, having been first duly sworn, testified further as follows:

FURTHER VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q. Mr. Yensen, have you been a juror before?

A. Yes, I have.

Q. Has that been recently?

A. Well, I was called last -- a week ago Monday, but I got excused.

Q. Have you ever sat clear through a case?

A. Yes.

Q. And you are familiar with the fact that you decide -- of course, this being a criminal case, you will

1 decide guilt or innocence, but the Judge will tell you in his  
2 instructions what the law is in this case?

3 A. Yes.

4 Q And you realize that you'll have to be guided by  
5 those instructions?

6 A. Yes, I do.

7 Q You have no reservations about following the  
8 instructions of the Court, do you, Mr. Yensen?

9 A. No.

10 Q Is this the slow time of year as far as being a  
11 logger, or rancher, is concerned?

12 A. No, it isn't.

13 Q Now, we've had a late spring, sometimes I wonder  
14 -- or an early fall. Anything about your work that would  
15 interfere with your calm and deliberate consideration of this  
16 case?

17 A. Well, I don't think so.

18 Q You'll give it the attention that it deserves.  
19 This is a serious matter.

20 Now, Mr. Yensen, I know by now you are aware that  
21 this is a capital case wherein the death penalty might be  
22 inflicted.

23 A. Yes.

24 Q Now, if the Judge -- I'm sure the Judge will  
25 instruct you that the penalty in the case like this is not for

1 the jury to decide and can you follow that instruction?

2 A. Yes.

3 Q. And I'm sure you understand that it is not the  
4 function of the jury to fix the penalty; that penalty has been  
5 fixed by the legislature, or others, that that is not your  
6 function here in this case. Your function is merely to  
7 determine the guilt or innocence based upon the evidence.

8 A. Yes.

9 Q. Do you have any strong conviction or religious  
10 convictions that would affect your view of capital punishment?

11 A. No.

12 MR. REMAKLUS: I'll pass the juror for cause.

13  
14 FURTHER VOIR DIRE EXAMINATION

15 BY MR. HOWER:

16 Q. Mr. Yensen, is there any professional or  
17 social relation between you and Mr. Remaklus?

18 A. No.

19 Q. You didn't know him until --

20 A. I've known or known who he is for years.

21 Q. Well, there's a difference between knowing him  
22 and knowing who he is. Have you known him personally for years?

23 A. I can't say personally. I think I've met the man.  
24 But, as far as any social, why, none whatsoever.

25 Q. And he's never been your attorney?

1 A. No. Not that I recall.

2 MR. HOWER: Thank you. Pass for cause.

3

4

ICLE C. LEWIS,

5

a prospective juror herein, being first duly sworn, testified

6

further as follows:

7

8

FURTHER VOIR DIRE EXAMINATION

9

BY MR. REMAKLUS:

10

Q Mrs. Lewis, have you been a juror here before?

11

A. Yes.

12

Q And has that been recently?

13

A. No, it's been years ago. I forgot what year.

14

It was a civil case.

15

Q You understand, then, that the Judge will

16

instruct you as to what the law is in this case and you'll have

17

to follow his instructions?

18

A. I do.

19

Q Now, even though you might disagree as to what

20

the law is, you are still bound to follow that. You won't

21

have any trouble there, would you, Mrs. Lewis?

22

A. That's right.

23

Q Does the attorney-client relationship exist

24

between you and Mr. Hower?

25

A. No, there isn't.

1 Q And --

2 A In fact, this is the first I ever seen him.

3 Q Thank you. The attorney-client relationship

4 does not exist between you or your husband and my office; does

5 it?

6 A No, it doesn't.

7 Q And how long -- you live up at Donnelly; don't

8 you?

9 A Yes, I do.

10 Q How long have you lived up there?

11 A About 19 years. Lived in Cascade five years.

12 Q And you lived here before you moved to Donnelly?

13 A Yes, I did.

14 Q You don't have any children at home now, do you?

15 A No, I do not.

16 Q Is there anything, Mrs. Lewis, that would

17 interfere with your sitting here as a trial juror? By that

18 I mean, any urgent business that you feel you'd have to get

19 home to or anything of that nature?

20 A No, there isn't.

21 Q You feel that you can make arrangements to stay

22 here as long as this case may take; to give it your

23 undivided attention for the duration of the trial?

24 A Yes, I do.

25 Q Do you have any religious or strong personal

1 convictions regarding the death penalty that would interfere  
2 with your judgment in that matter?

3 A. No, I don't.

4 Q. You feel that you can separate the penalty in  
5 your mind from the fact of guilt or innocence and render a  
6 verdict as to guilt or innocence; based upon the evidence that  
7 will be presented here in the courtroom?

8 A. I do.

9 Q. And if the State in your mind proves the fact  
10 of guilt beyond a reasonable doubt, that you can bring in a  
11 verdict of guilty in this matter without regard to penalty?

12 A. That's right.

13 MR. REMAKLUS: Pass the juror for cause.

14 MR. HOWER: Pass for cause, Your Honor.

15

16 SANDRA K. DURK,

17 a prospective juror herein, being first duly sworn, testified  
18 further as follows:

19

20 FURTHER VOIR DIRE EXAMINATION

21 BY MR. REMAKLUS:

22 Q. Mrs. Durk, I see Mr. Durk is a teacher?

23 A. Yes.

24 Q. And does he teach there at McCall?

25 A. Yes, sir.

1 Q How long has he been employed there?  
2 A Five years.  
3 Q And what grades does he teach?  
4 A He teaches high school, physical education and  
5 driver's education.  
6 Q And how long have you folks been married?  
7 A Eleven years.  
8 Q And how many years has Mr. Durk been engaged in  
9 teaching?  
10 A For five years.  
11 Q Five years? Has that all been at McCall?  
12 A Yes, sir.  
13 Q And where did Mr. Durk receive his education?  
14 A At Pocatello.  
15 Q And he's a graduate down there of Idaho State?  
16 A Yes, sir.  
17 Q I see you have children and they'd be at home;  
18 would they not?  
19 A They are school age.  
20 Q But, they are home with you and Mr. Durk?  
21 A Yes.  
22 Q If you are finally selected here as a juror, can  
23 you make proper arrangements for the children?  
24 A Yes.  
25 Q I realize it's a problem, Mrs. Durk, but is there

1 anything about being away from the children here for such time  
2 as it takes to conclude this trial, would that interfere with  
3 your deliberations and -- or interfere with your attention to  
4 the details of the trial?

5 A. I don't believe so.

6 Q. You think that you could give your undivided  
7 attention to the matters presented here in court?

8 A. Yes.

9 Q. Do you have any moral position or religious  
10 position with reference to the death penalty?

11 A. No.

12 Q. In the event that you were satisfied that at the  
13 conclusion of the evidence that the defendant is guilty, would  
14 the fact that the death penalty may be involved, would that  
15 prevent you from rendering a fair and impartial verdict?

16 A. No.

17 Q. Can you think of any reason why, whether I've  
18 asked you or not, you can't be a fair and impartial juror on  
19 this case?

20 A. No.

21 MR. REMAKLUS: We'll pass the juror for cause.  
22  
23  
24  
25

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. HOWER:

3 Q. Mrs. Durk, how long have you been married?

4 A. Eleven years.

5 Q. Where did you grow up? What's your home town?

6 A. Twin Falls, Idaho.

7 Q. Twin Falls? From what age to what age did you  
8 live there?

9 A. Birth to 18.

10 Q. How much, if any college education, have you had?

11 A. None.

12 Q. None? Did you graduate from high school in  
13 Twin Falls?

14 A. No, I graduated from high school at Eden, Idaho.

15 Q. At Eden? Are you now employed? You are not, are  
16 you?

17 A. I have a part-time job, yes.

18 Q. What do you do?

19 A. I work for Sears in McCall.

20 Q. How long have you worked there?

21 A. A little over a year.

22 Q. Do you have any proprietary interest in that  
23 business?

24 A. Pardon me?

25 Q. Do you have any proprietary interest in that

1 business?

2 A. No.

3 Q. You are just an employee?

4 A. Yes.

5 Q. What does your husband do?

6 A. He's a coach and a teacher.

7 Q. Um-hmm. Five years at McCall?

8 A. Yes.

9 Q. Do you think of yourself as bound, Mrs. Durk,  
10 in a religious sense as distinguished from a legal sense, by  
11 an oath?

12 I'm asking if you believe you would be punished  
13 if you break it and not punished if you keep it?

14 A. Could you repeat that again, please.

15 Q. If you take an oath and break it, do you believe  
16 you will be punished by God as distinguished from, possibly,  
17 being punished by the law?

18 A. Yes.

19 Q. You believe there is a religious thing behind  
20 an oath?

21 A. Yes, sir.

22 MR. HOWER: Pass for cause, Your Honor.

23

24

25

1 J. H. JOHNSON,  
2 a prospective juror herein, having been first duly sworn,  
3 testified further as follows:  
4

5 FURTHER VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mr. Johnson, you and I have been acquainted for  
8 a long time; have we not?

9 A I think since you was born.

10 Q Not quite that long, but almost.

11 Now, first acquaintanceship was there when I was  
12 growing up in McCall, Idaho; is it not?

13 A That's right, until I came back. I haven't  
14 seen you for, maybe, 30 years.

15 Q This is what I wanted to ask you about. When  
16 you left McCall years ago and took employment, you were gone  
17 for 30 years; that's about right, isn't it? You were away  
18 from there?

19 A Well, I was gone from '34 until I came back to  
20 McCall in '69.

21 Q Um-hmm. And during that time, to the best of  
22 my recollection, I don't know whether we saw each other or  
23 what, once or twice, perhaps, I'm not sure of that.

24 A How is that?

25 Q I say, during the time that you were away from

1 McCall I don't know whether you and I have ever even seen  
2 each other, maybe once or twice during this long period of time?  
3 A. That's right.  
4 Q. So, the attorney-client relationship does not  
5 exist between you and me, does it?  
6 A. No.  
7 Q. It never has, has it?  
8 A. Never has.  
9 Q. Is there anything in the fact that, I guess you  
10 and I would be called old-timers here, that would reflect one  
11 way or another with reference to this case?  
12 A. No.  
13 Q. The fact that we have been acquainted and we've  
14 lived here, would not prejudice you for or against the  
15 defendant?  
16 A. No.  
17 Q. All right. Have you ever been a juror before?  
18 A. Yes.  
19 Q. Was that here recently?  
20 A. Last week.  
21 Q. Okay. Then, the -- well, the fact that you,  
22 as a juror, determine the facts and the Judge will instruct  
23 you as to the law, that's fresh in your mind; isn't it?  
24 You remember the procedure to go through?  
25 A. Yes.

1 Q. Sure. Mr. Johnson, do you have any strong moral  
2 or religious opinion as to the death penalty?

3 A. No.

4 Q. Can you separate in your mind the fact of guilt  
5 or innocence from the penalty?

6 A. Yes.

7 Q. You realize it is not up to the jury or to the  
8 Prosecutor to fix penalty, that is another function?

9 A. That's right.

10 Q. Can you think of any reason, whether I've asked  
11 you or not, why you could not be fair and impartial -- a fair  
12 and impartial juror in this matter?

13 A. No.

14 MR. REMAKLUS: Thank you, Mr. Johnson. We'd pass  
15 the juror for cause, Your Honor.

16 MR. HOWER: Pass for cause, Your Honor.

17

18 SHIRLEY H. BROWN,  
19 a prospective juror herein, being first duly sworn, testified  
20 further as follows:

21

22 FURTHER VOIR DIRE EXAMINATION

23 BY MR. REMAKLUS:

24 Q. Mrs. Brown, how long have you lived there at  
25 McCall?

1 A. We've been home for about ten years. I was  
2 raised in Meadows Valley.

3 Q. You lived in Meadows Valley?

4 A. Yes.

5 Q. I was going to ask you if you grew up in the  
6 McCall area. Thank you.

7 How long have you and Mr. Brown been married?

8 A. Fifteen years.

9 Q. I see you have two children now, ten and  
10 thirteen. Are they at home with you and Mr. Brown?

11 A. Yes, they are.

12 Q. If you are chosen as a juror, can you make  
13 arrangements that will be satisfactory to you for the care of  
14 the children during the time that you will be away from home?

15 A. I can.

16 Q. Would this give you any problems, you think, as  
17 far as interfering with your attention to the testimony and  
18 the conduct of the lawsuit?

19 A. No.

20 Q. And I notice here that you are employed at the  
21 Idaho Power Company there in McCall.

22 A. Yes.

23 Q. And can you make arrangements to have your work  
24 taken care of during your absence?

25 A. Yes, I can.

1           Q     So, there's nothing with reference to either your  
2 work or your home life that would interfere with you serving  
3 as a juror?

4           A.     No.

5           Q     Apparently you have never served on a jury  
6 before, is that right?

7           A.     That's right.

8           Q     And I'm sure that you have paid close attention  
9 to the questions that Mr. Hower has asked of prospective  
10 jurors and you have paid close attention to my questions that  
11 I've asked you and also asked the other members of the panel.

12                     Now, do you understand that you, as a juror,  
13 will determine the fact and that is, you would determine guilt  
14 or innocence, guilty or not guilty?

15           A.     Yes.

16           Q     And that is the sole function of a juror in a  
17 criminal case?

18           A.     Yes.

19           Q     Now, you understand also that His Honor would  
20 give you the -- read you the instructions as to what the law  
21 is and you will be bound by those instructions?

22           A.     I do.

23           Q     Now, the duty is on the State to prove the  
24 guilt of the defendant beyond a reasonable doubt.

25                     Now, Mrs. Brown, if the State proves -- meets

1 that purpose and proves in your mind the defendant to be  
2 guilty beyond a reasonable doubt, would the fact that the --  
3 that this is a capital case, make any difference to you in  
4 rendering your verdict?

5 A. No.

6 Q. Do you have any religious scruples concerning  
7 the death penalty?

8 A. I believe in it.

9 Q. Do you -- can you think of any reason, Mrs. Brown,  
10 whether I've asked you or not, why you could not be a fair  
11 and impartial juror in this case?

12 A. No, I don't.

13 MR. REMAKLUS: I pass the juror for cause,  
14 Your Honor.

15  
16 FURTHER VOIR DIRE EXAMINATION

17 BY MR. HOWER:

18 Q. Mrs. Brown, have you lived your entire life in  
19 Meadows Valley?

20 A. I moved to Meadows when I was about four years  
21 old.

22 Q. Where did you move from?

23 A. We lived in Oklahoma.

24 Q. Your parents moved here with you?

25 A. Yes.

1 Q Where are they now?  
2 A Father is deceased and my mother has remarried  
3 and lives in Twin.  
4 Q You went to school, then, in the Meadows system?  
5 A Yes.  
6 Q Did you go through high school there?  
7 A Yes.  
8 Q Did you go to college?  
9 A I have one year of nursing at St. Alphonsus in  
10 Boise.  
11 Q Mrs. Brown, I don't mean to pry into what most  
12 people think of as private business, but I do have to know.  
13 Do you think of yourself as a religious person?  
14 A Yes, I do.  
15 Q Are you regular in church attendance?  
16 A Yes, I am.  
17 Q Do you feel that there is a religious sanction  
18 behind an oath; any oath that you take?  
19 A Yes, I do.  
20 MR. HOWER: Pass this juror for cause, Your Honor.  
21  
22  
23  
24  
25

1 CAROLYN SIENS,  
2 a prospective juror herein, having been first duly sworn,  
3 testified further as follows:  
4

5 FURTHER VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7 Q Mrs. Siens, how long is it now that you folks  
8 have been in business here in Cascade?

9 A Going on seven years, I believe.

10 Q And I think you lived here about a year before?

11 A Yes.

12 Q Before you bought the Chief?

13 A Yes.

14 Q Does the attorney-client relationship exist  
15 between you and Mr. Siens and Mr. Hower?

16 A No, had a few business dealings, but that's  
17 about all.

18 Q Are they all concluded?

19 A Yes.

20 Q Fine. And there's no attorney-client  
21 relationship between you and Mr. Siens and my office?

22 A No.

23 Q Have you been a juror before, Mrs. Siens?

24 A No, I was called last week, but I didn't serve.

25 Q So, you have never had an opportunity to serve

1 as a juror?

2 A. No.

3 Q. I know you've listened very carefully to  
4 questions that I have asked and Mr. Hower has asked. You  
5 understand that the Judge will instruct you as to the law in  
6 this case?

7 A. Yes.

8 Q. And that you as a juror would determine the  
9 fact of guilt or innocence and that is your function and that  
10 the question of punishment, or penalty, is not the jury's  
11 function to determine.

12 The fact that this involves the capital case,  
13 or death penalty, would that in itself interfere with your  
14 deliberations with reference to guilt or innocence in this  
15 matter?

16 A. No, I believe not.

17 Q. You believe that if the State meets the  
18 obligations of proving guilt beyond a reasonable doubt that  
19 you could return your verdict based on the evidence without  
20 taking into consideration what the penalty might be?

21 A. I believe so.

22 Q. You can separate them and define them?

23 A. Yes.

24 Q. I'm assuming, Mrs. Siens, that if you are  
25 selected as a juror that you can make arrangements for your

1 son and --

2 A. Yes.

3 Q. As far as your work is concerned, you can make  
4 proper arrangements so that won't be on your mind?

5 A. Yes.

6 MR. REMAKLUS: Thank you. Pass the juror for cause.

7 MR. HOWER: I pass this juror for cause, Your Honor.

8

9 DUANE PERRY ALLEN,

10 a prospective juror herein, having been first duly sworn,  
11 testified further as follows:

12

13 FURTHER VOIR DIRE EXAMINATION

14 BY MR. REMAKLUS:

15 Q. You've been a juror before, Mr. Allen?

16 A. Yes.

17 Q. Was that here?

18 A. Yes, last week.

19 Q. Well, then, everything is pretty fresh in your  
20 mind as to receiving instructions from the Judge as to what the  
21 law is and that the jury -- or you, as a juror, would determine  
22 what the facts are; this being a criminal case, you would  
23 determine guilt or innocence; isn't that correct?

24 A. Yes.

25 Q. You lived up at McCall for five years; is that

1 correct --

2 A. Yes.

3 Q. -- Mr. Allen?

4 And you are now retired?

5 A. Yes.

6 Q. I see Mrs. Allen works in one of the banks?

7 A. Yes.

8 Q. You are aware, I know by the questions, by now,  
9 that this is a capital case, Mr. Allen. Would this -- do you  
10 have any religious or moral scruples concerning capital  
11 punishment?

12 A. No.

13 Q. You understand, I'm sure, that the function of  
14 the jury is to determine guilt or innocence and that someone  
15 else fixes or pronounces the judgment?

16 A. Yes.

17 Q. And that you and I as participants in this  
18 trial have nothing to say about that?

19 A. (No audible response.)

20 MR. REMAKLUS: I'll pass the juror for cause.

21

22

23

24

25

FURTHER VOIR DIRE EXAMINATION

BY MR. HOWER:

Q. Mr. Allen, what was the nature of the case on which you sat as a juror?

A. Civil.

Q. What did it involve?

A. A sewer back-up in McCall in 1974.

Q. Who were the -- who were the parties involved? Was the City of McCall a party?

A. The City of McCall was a party.

Q. Who was counsel for the City of McCall?

A. The name slips my mind.

Q. Not a local attorney, I take it?

A. No, it was an attorney from Boise.

Q. And who was counsel for the other party?

A. Local lawyer, Larry --

Q. Shoenhut?

A. Shoenhut and a partner.

Q. You've never had any legal or social relationship with Mr. Remaklus or his office; have you?

A. No.

Q. Was that case decided by the jury or was it taken from the jury; or what happened?

A. It was decided by the jury.

Q. Decided by the jury?

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I pass this juror for cause.

SHIRLEY G. ALLEN,  
a prospective juror herein, having been first duly sworn,  
testified further as follows:

FURTHER VOIR DIRE EXAMINATION

BY MR. REMAKLUS:

Q Mrs. Allen, you, I know, are reluctant to serve  
as a juror in this matter. Of course, I'm aware that your  
husband is a doctor and I would ask you at the outset,  
Mrs. Allen, if the fact that your husband is a doctor and  
engaged in the prolonging of life in that profession and I'm  
sure his very strong belief in his profession, would that  
interfere with your independent judgment in rendering a verdict  
in this case according to the evidence as the way you see it?

A. No.

Q Do you have any moral or religious reservations  
about the death penalty?

A. No.

Q You realize, even though it is involved, that  
that is not a function of the jury; pronouncement of judgment  
is a different function?

A. Right.

Q My function is to present the evidence and your

1 function as a juror will be to determine the facts and, this  
2 being a criminal case, would be guilt or innocence.

3 I see that you have never been a juror before.

4 A. I was, probably eight or so years ago.

5 Q. Was that here in Cascade?

6 A. Um-hmm.

7 Q. That's been quite awhile ago. I'm sure through  
8 the questioning of other prospective jurors you know now that  
9 the Judge will instruct you as to what the law is in this  
10 case and that you must follow those instructions regardless if  
11 you would have an opinion that the law should be different, you  
12 still have to follow the Judge's instructions.

13 A. Right.

14 Q. Mrs. Allen, other than being reluctant to be  
15 away from home for what could possibly be several days and  
16 whether I've asked you or not, can you give any reason why  
17 you couldn't be a fair and impartial juror in this case?

18 A. Not unless I just got pulled in two different  
19 directions and --

20 Q. Well, I think what we're talking about here and  
21 what this whole function is about at this point is to select  
22 12 people who will have an open mind and won't have any  
23 preconceived ideas and can take the evidence as presented here  
24 in the courtroom and base their decision on that evidence.

25 Now, let me ask you if you can do that.

1

A. Yes.

2

3

4

Q. I'm sure you can. Now, I know that you are engaged in business up at McCall and do you -- that's the antique business; is it not?

5

A. Yes.

6

7

Q. Is it your custom to spend so many hours per day in that -- in the business?

8

A. Yes.

9

10

Q. And you are active in waiting on customers and performing everything that's to be done in that; are you?

11

A. Yes.

12

13

Q. And you make -- can you make arrangements for someone else to do that work while you are gone?

14

A. Yes.

15

16

17

18

Q. You feel that you can give this lawsuit, and it is a serious suit, can you give it your undivided attention and not be -- not worry about your family or your business during the course of the trial?

19

20

21

A. Yeah, I don't think it's fair to say that I won't worry about the family, I don't think any wife or mother can say that without --

22

23

Q. Yes, I agree there, Mrs. Allen, but I think what I am asking --

24

A. I'd try.

25

Q. You would pay close attention to the testimony

1 and to the evidence and render a verdict that would be just to  
2 the State of Idaho and just to the defendant?

3 A. Right.

4 MR. REMAKLUS: I'll pass this juror for cause.

5 MR. HOWER: We pass this juror for cause, Your Honor.

6

7

SHARON J. GIBBENS,

8 a prospective juror herein, having been first duly sworn,

9 testified further as follows:

10

11

FURTHER VOIR DIRE EXAMINATION

12

BY MR. REMAKLUS:

13

Q Mrs. Gibbens, I have a sheet here, a copy that

14

you turned in to the Court and I only have a few questions

15

to ask.

16

How long have you lived at McCall?

17

A. Four years, almost five.

18

Q Excuse me?

19

A. I think almost five.

20

Q And I notice that your husband is a Forestry

21

Technician.

22

A. It's the wrong "Gibbens". There's two of us,

23

one is Shirley and I'm Sharon. He said Shirley when I came

24

in.

25

THE COURT: It's G-i-b-b-e-n-s?

1 THE WITNESS: Yes.

2 MR. REMAKLUS: I had Shirley and you are Sharon Jean  
3 Gibbens?

4 THE WITNESS: Right.

5 MR. REMAKLUS: Thank you.

6 Q BY MR. REMAKLUS: And you have been in McCall,  
7 you think, about five years?

8 A I think so.

9 Q Has Mr. Gibbens been with the bank there all  
10 that time?

11 A Yes.

12 Q Where did you folks live before you came to  
13 McCall?

14 A Shelley.

15 Q And was Mr. Gibbens in the bank -- in the  
16 banking business over there?

17 A Yes.

18 Q Are you employed now?

19 A No.

20 Q I see you had a varied career; cosmetologist  
21 and flagman for a road crew.

22 You have three children at home?

23 A Yes, one is in the first grade.

24 Q But they are all at home with you and  
25 Mr. Gibbens?

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A. Yes.

Q. Now, if you are selected here as a juror, can you make proper arrangements for care of the children while you are performing your duty as a citizen?

A. Yes.

Q. Mrs. Gibbens, do you have any moral or religious opinion regarding the death penalty?

A. No.

Q. Have you been -- I see you haven't been a juror --

A. No.

Q. After all of the conversation here today, you know that as a juror the Judge will give you the instructions as to what the law is and that you, as a juror, will determine the facts of the guilt or innocence?

A. Yes.

Q. Now, if the State meets the obligation of proving the defendant guilty beyond a reasonable doubt, can you in good conscience bring in a fair and impartial verdict based on that evidence?

A. I think so.

MR. REMAKLUS: I'll pass the juror for cause.

1 FURTHER VOIR DIRE EXAMINATION

2 BY MR. HOWER:

3 Q Mrs. Gibbens, I hope you will excuse me while we  
4 catch up, we were reading all about you from the wrong piece of  
5 paper, doesn't say much, really.

6 Says you've been a resident of Idaho all your  
7 life?

8 A All my life.

9 Q And of Valley County three years and ten months.  
10 Where did you go to school?

11 A Caldwell.

12 Q All the way in Caldwell?

13 A Yes.

14 Q How far did you go?

15 A All the way through high school and, then, I went  
16 to cosmetology school in Nampa.

17 Q In Nampa?

18 A Yes.

19 Q Um-hmm. What year did you go to cosmetology  
20 school?

21 A From '60 to '61.

22 Q Have you worked at anything other than a  
23 registered cosmetologist or flagman for a road crew?

24 A No.

25 Q Where did you work as a flagman?

1 A. Out at Black Bear, towards Riggins.

2 Q Mrs. Gibbens, do you have any uneasiness or  
3 uncertainty about the risk that you might be a member of a jury  
4 which returns an unpopular verdict so far as Valley County is  
5 concerned?

6 A. No.

7 Q You have the courage to do that if it comes to it?

8 A. Yes.

9 Q You are not concerned about adverse effects upon  
10 your husband's work or anything like that?

11 A. No.

12 MR. HOWER: Pass for cause, Your Honor.

13

14 WILMA MURPHY,

15 a prospective juror herein, having been first duly sworn,  
16 testified further as follows:

17

18 FURTHER VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q Mrs. Murphy, have you been a juror here before?

21 A. Yes, this past week.

22 Q Do you remember what kind of a case that was?

23 A. Civil case.

24 Q Fresh in your mind about being instructed as to  
25 the law by the Judge and you, as a juror, would determine the

1 facts?

2 A. Yes, sir.

3 Q. If you are selected as a juror, you can make  
4 arrangements at work to get off work; can you not?

5 A. Yes.

6 Q. And, as I recall, we asked you many questions  
7 here before and I think you amply demonstrated that you have  
8 the time to devote to this case.

9 Now, do you have any mental reservations about  
10 sitting here as a juror in this particular case, Mrs. Murphy?

11 A. In what way?

12 Q. Yeah, this is a case involving capital punishment  
13 and do you have any moral or religious opinions, or positions,  
14 with reference to capital punishment?

15 A. I think that I should say this: That I have  
16 some reservations in my mind as to whether the death penalty  
17 should be or not. However, I equally, strongly believe that  
18 this is what we have to work with and, therefore, I have no  
19 reservations concerning it.

20 Q. If the State meets the high burden of proof  
21 placed upon it and, then, could you arrive at your decision in  
22 this case with a clear conscience, then, Mrs. Murphy?

23 A. Yes.

24 MR. REMAKLUS: We'll pass this juror for cause.

25 MR. HOWER: We pass this juror for cause, Your Honor.

1 THE COURT: We'll take a ten-minute recess at this  
2 time.

3 I'll ask the 12 of you to go back on down to the  
4 regular jury room downstairs during the recess and we'll now  
5 have pre-emptory challenges. So, we'll be involved, again, in  
6 the process of individually examining. So, you might be down  
7 there for awhile.

8 Please abide by the admonition I've given you  
9 before, don't discuss the case and keep your minds open.

10 (Recess taken.)

11 THE COURT: All right, State's first pre-emptory.

12 THE CLERK: Cindy Smith.

13 THE COURT: So we don't have to wait, if not we might  
14 have an extra one we might not need.

15 MR. HOWER: Do I understand that as of now we have  
16 Martha Noyes and we're drawing one ahead of her; is that  
17 correct?

18 THE COURT: Well, we did have Martha Noyes but  
19 Mr. Remaklus raised some questions about that.

20 MR. HOWER: I don't feel strongly about it. What's  
21 the situation is all I need to know.

22 THE COURT: Well, we had put her back in the box since  
23 we had 12 drawn. But, if you want to start with her, we can  
24 since she was drawn.

25 MR. REMAKLUS: No, Your Honor, I felt that we should

1 put the name back in the box and start redrawing.

2 THE COURT: Any objections?

3 MR. HOWER: No, who have we drawn.

4 THE COURT: What name did you draw?

5 THE CLERK: Cindy R. Smith.

6 THE COURT: Draw another one.

7 THE CLERK: Jeanette Seetin.

8 MR. REMAKLUS: Your Honor, are we going to invite each  
9 juror in separately and question as to pretrial publicity and,  
10 then, if they pass for cause at that point and seat them, bring  
11 in the jury and complete the questioning; or how are we going  
12 to handle that?

13 THE COURT: Well, I would propose at this point on  
14 the pre-emptory that you examine them purely for cause at one  
15 sitting.

16 The only other way we could do it, we could do  
17 it the same way we did with the original 12, or we could go  
18 ahead and exhaust all the pre-emptories -- well, I don't know  
19 how you can. I don't know how you can exercise your  
20 pre-emptories without completing your examination.

21 MR. HOWER: I don't either.

22 MR. REMAKLUS: I'm wondering, Your Honor, since the  
23 other jurors have been questioned as to pretrial publicity, if  
24 we could just seat them among the other jurors and, then,  
25 question them in absentia.

1 THE COURT: No, I don't want them when you are  
2 going to be questioning on pretrial publicity and I don't want  
3 any questions of the pretrial publicity in the presence of the  
4 other jurors because we've got some jurors on there that  
5 haven't read very much about it and you don't want them to  
6 have this material brought to their attention that they don't  
7 have already. So, I would like on this procedural question,  
8 Mr. Hower, what I would like to do is both of you examine each  
9 of these jurors on the pretrial publicity first and, then,  
10 if you pass her on that then we'll go back and examine her  
11 for cause on any other grounds you have.

12 MR. REMAKLUS: Thank you, Your Honor.

13  
14 CINDY R. SMITH,  
15 a proposed juror herein, having been first duly sworn, took  
16 the stand and testified as follows:

17  
18 VOIR DIRE EXAMINATION

19 BY MR. REMAKLUS:

20 Q Mrs. Smith, we've asked you in here at this  
21 time and in the absence of the other jurors to take up the  
22 matter of pretrial publicity.

23 Now, what we're going to discuss and what I'm  
24 referring to are newspaper articles, television and radio  
25 broadcasts, conversations that you may have overheard or took

1 part in; things of that nature.

2 At this point in our questioning we're going to  
3 confine it to this kind of publicity. Now, have you followed  
4 this case in the newspapers?

5 A. Yes, I have.

6 Q. And have you followed it in the papers recently?

7 A. Yes.

8 Q. Did you read, say, Sunday's paper?

9 A. Yes, I did.

10 Q. And how about yesterday? Did you see yesterday's  
11 Statesman?

12 A. No, I did not.

13 Q. Now, did you see this morning's paper?

14 A. No.

15 Q. And have you made it a point to follow this case  
16 in the Statesman?

17 A. No.

18 Q. You folks take the paper?

19 A. No, if I go to the store I buy one, but we don't  
20 have it delivered to our door.

21 Q. So, you don't get it every day, is that right?

22 A. Um-hmm.

23 Q. Do you folks have a television set, Mrs. Smith?

24 A. Yes, we do.

25 Q. Do you follow the news broadcasts?

1 A. No.

2 Q. Have you discussed this case with any of your  
3 friends?

4 A. No, I have not.

5 Q. Have you discussed it with your husband?

6 A. Yes, I have.

7 Q. Have you discussed it with him to any extent other  
8 than you've been summoned here today?

9 A. No.

10 Q. Have you discussed, without asking you any  
11 conclusions you might have reached, I might ask you something  
12 that would lead up to a conclusion, you understand?

13 A. Um-hmm.

14 Q. Have you and Mr. Smith discussed guilt or  
15 innocence in this case?

16 A. No, we have not.

17 Q. Have you formed any opinion as to guilt or  
18 innocence as a result of newspaper stories?

19 A. No, I have not.

20 Q. Have you discussed what the newspaper has said in  
21 the articles? Have you discussed specifically the articles  
22 with your husband?

23 A. Some of them, yes.

24 Q. Now, have you arrived at any conclusion in your  
25 own mind as to guilt or innocence in this case as a result of

1 reading newspaper articles?

2 A. No, I have not.

3 MR. REMAKLUS: We pass the juror for cause, Your Honor.

4 MR. HOWER: We pass this juror for cause with respect  
5 to pretrial publicity, Your Honor.

6 THE COURT: Very well.

7 MR. REMAKLUS: Are we to proceed, now, at this point?

8 THE COURT: Yes.

9

10 FURTHER VOIR DIRE EXAMINATION

11 BY MR. REMAKLUS:

12 Q. Mrs. Smith, how long have you been married?

13 A. A year and three months.

14 Q. And I see you just have a small baby?

15 A. Um-hmm.

16 Q. And what kind of work does Mr. Smith do?

17 A. He works at the mill. He pulls green chain.

18 Q. And how long has he been working there?

19 A. A year and a half.

20 Q. And I see you live right there in town, McCall?

21 A. Um-hmm.

22 Q. If you are selected as a juror, have you made  
23 arrangements, or can you make arrangements to have the baby  
24 taken care of?

25 A. Yes, I can.

1 Q Do you have other family at McCall?  
2 A Yes, um-hmm.  
3 Q And who are they?  
4 A His family and my family.  
5 Q Which Smiths are they?  
6 A David B. Smith.  
7 Q And who are your people, Mrs. Smith?  
8 A August and Loretta Hill.  
9 Q And where does your father -- is he retired or  
10 does he work?  
11 A He's working at the mill.  
12 Q Has he worked there a long time?  
13 A Um-hmm.  
14 Q Did you grow up in McCall?  
15 A Yes, I did.  
16 Q Did you graduate from McCall High School?  
17 A Yes, I did.  
18 Q What year was that?  
19 A 1973.  
20 Q And where is -- well, Mr. Smith also grew up  
21 there in McCall, is that right?  
22 A Um-hmm.  
23 Q Fine. Since, as you've stated a few minutes ago  
24 that you haven't formed any opinion about this, or talked to  
25 anyone, you feel that you, if you are selected here as a juror,

1 would have an open mind at this point?

2 A. Yes, I do.

3 Q. You don't have any preconceived idea of guilt or  
4 innocence?

5 A. No.

6 Q. I notice, Mrs. Smith, that you have never been  
7 a juror before.

8 A. That's correct.

9 Q. Now, if you are selected here in this case, your  
10 function as a juror will be to determine whether or not the  
11 defendant is guilty.

12 A. Um-hmm.

13 Q. And you will receive the instructions from the  
14 Court as to what the law is.

15 A. Um-hmm.

16 Q. Now, you must follow those instructions as to  
17 what the law is; regardless of your personal opinion. Under  
18 our law you are required to take the law as given to you by  
19 the Judge.

20 Now, can you do that? You think you have any  
21 difficulty in following the Judge's instructions?

22 A. No, I do not.

23 Q. Do you have any religious or moral opinion,  
24 fixed opinion with reference to the death penalty?

25 A. No, I do not.

1 Q Mrs. Smith, if the State in this case convinces  
2 you beyond a reasonable doubt of the guilt of the defendant,  
3 would the fact that the death penalty involved -- is involved,  
4 would that interfere with your returning a verdict in this  
5 matter?

6 A No.

7 Q Now, do you understand that the pronouncement  
8 of judgment is not a function of the jury; that is the  
9 function that is not within our power or authority.

10 A Um-hmm.

11 Q That you will be the finder of fact.

12 A Right.

13 Q You decide the guilt or innocence.

14 A Um-hmm.

15 Q And you will, I'm sure, be instructed by the  
16 Court that the penalty is not a problem of you as a juror.  
17 Now, can you follow that instruction?

18 A Yes.

19 MR. REMAKLUS: We'll pass the juror for cause.

20 MR. HOWER: We pass the juror for cause, Your Honor.

21 THE COURT: Mrs. Smith, you may go down to the jury  
22 room at this time and I would ask you not to discuss the  
23 questioning with the other jurors.

24 THE CLERK: Donald Fuller.  
25

1                                   JEANETTE M. SEETIN,  
2 a prospective juror herein, having been first duly sworn, took  
3 the stand and testified as follows:  
4

5                                   VOIR DIRE EXAMINATION

6 BY MR. REMAKLUS:

7                   Q     Mrs. Seetin, you have been asked into the courtroom  
8 at this point to enable us to discuss pretrial publicity and our  
9 first questions to you are going to be concerned with newspaper  
10 articles, television broadcasts and conversations that you may  
11 have overheard or participated in.

12                               The first part of the questions are going to be  
13 limited to that aspect of it.

14                               Now, I assume that you and Mr. Seetin take the  
15 daily paper?

16                   A.     Right.

17                   Q.     And you also take the local paper?

18                   A.     Yes.

19                   Q.     Now -- and I assume that you catch the news  
20 broadcasts on television?

21                   A.     Yes.

22                   Q.     Have you particularly followed the Creech case any?

23                   A.     Yes.

24                   Q.     And have you followed it in the newspapers?

25                   A.     Yes, um-hmm.

1           Q     Could you tell us how recently you have followed  
2 that?

3           A     Well, I read the morning paper and I watched the  
4 news last night, twice, 5:00 and 10:00.

5           Q     Now, the fact that you have heard it on the news  
6 and read about it in the paper, has that, you think, would  
7 prevent you from having a fair and impartial frame of mind if  
8 you are selected here as a trial juror in this case?

9           A     Well, I think you couldn't help but -- I think I'd  
10 probably be fair, but I think probably would have something too,  
11 bearing on the case because I have heard the investigations that  
12 they've been making, read about it.

13          Q     Now, have you heard anything about it in  
14 conversations from people who state that they know what the  
15 facts are supposed to be?

16          A     No.

17          Q     Have you come any closer to it than the newspaper  
18 articles?

19          A     No.

20          Q     Now, if you are selected here as a trial juror the  
21 Judge will read you the instructions and he will give you the  
22 instructions as to what the law is.

23          A     Um-hmm.

24          Q     And you must accept his instructions as being the  
25 law in this case.

1 A. Yes.

2 Q Now, I don't know, have you been a juror before,  
3 Mrs. Seetin?

4 A. No.

5 Q Now, you are bound under oath to follow the  
6 Judge's instructions.

7 A. I understand.

8 Q Now, if you were instructed by the Judge to base  
9 your decision solely upon the evidence that's produced here in  
10 the courtroom, could you arrive at a verdict based solely and  
11 only upon such evidence?

12 A. I think so, but I think it's a little difficult  
13 to say if -- I think I could be fair as far as I felt that I  
14 was being fair.

15 MR. REMAKLUS: Yes. I'll pass the juror for cause,  
16 Your Honor.

17

18 VOIR DIRE EXAMINATION

19 BY MR. HOWER:

20 Q Mrs. Seetin, forgive me for asking, I probably  
21 should know, but are you Mrs. Jack Seetin?

22 A. Yes.

23 Q You are?

24 A. Yes.

25 Q Your husband, then, is Mayor of McCall?

1 A. No, no. He's an assistant to the Mayor.  
2 Q. All right. Okay. He is in law enforcement; he  
3 is a Magistrate; is that correct?  
4 A. Not really. He's a limited Magistrate.  
5 Q. Yes.  
6 A. Yes, he acts in that capacity.  
7 Q. Has your husband, so far as you know, to your  
8 knowledge, has he had any discussions about this case with the  
9 Sheriff's Department people or law enforcement people?  
10 A. No.  
11 Q. Has your husband expressed an opinion to you at  
12 any time as to the probable guilt or innocence of this defendant?  
13 A. No.  
14 Q. You haven't discussed that aspect of the case  
15 with him?  
16 A. No.  
17 Q. Did you read specifically, Mrs. Seetin, the  
18 stories in the Idaho Statesman this morning, yesterday and  
19 the day before about this case?  
20 A. Yes.  
21 Q. You read all of those?  
22 A. Um-hmm.  
23 Q. Then, you have read a summary, or recaps of the  
24 possibilities discussed in the press, at least that  
25 Mr. Creech has been responsible for serious crimes in other

1 states?

2 A. Yes.

3 Q. When you say, Mrs. Seetin, that you could be fair  
4 to Mr. Creech, you mean to say that you could be fair to him  
5 taking that into consideration; what you have read about things  
6 that happened in other states, or may have happened?

7 A. Well, I understand that the case is based solely  
8 on what has been done here; that you have to discount anything  
9 that you think might have happened any place else.

10 Q. When you say "discount it", would you go so far  
11 as to say you have to go further? You have to put it out of  
12 your mind?

13 A. Well, yes, I think that's what I had.

14 Q. Now, we come to the nub, Mrs. Seetin. Having  
15 read these things and had them placed in your mind by reading  
16 them in the newspapers, are you confident that you can indeed  
17 put them out of your mind to the extent that your verdict, if  
18 you sit on the jury, will be based only on what comes into your  
19 mind in this courtroom and that it will not be based in any  
20 degree on what came into your mind before you came into this  
21 courtroom? Can you do that?

22 A. No, I'm not sure that I could to be honest.

23 MR. HOWER: Challenge for cause, Your Honor.

24 THE COURT: I'll grant the challenge.

25 We appreciate your frankness, Mrs. Seetin, and

1 we will excuse you at this time.

2 It will be necessary for you to report again on  
3 June 5th at 10:00. We have another jury trial scheduled for  
4 then.

5  
6 DONALD L. FULLER,  
7 a prospective juror herein, being first duly sworn, took the  
8 stand and testified as follows:

9  
10 VOIR DIRE EXAMINATION

11 BY MR. REMAKLUS:

12 Q Mr. Fuller, your examination as a potential  
13 juror on this matter is going to consist of, kind of in two  
14 parts; in the first part that we wanted to discuss with you  
15 deals only with pretrial publicity; by that I mean newspaper  
16 articles, television, radio broadcasts, conversations and  
17 things of that nature.

18 I'm going to limit my questions to that aspect  
19 of the case at this time.

20 Now, have you followed this case in the paper?

21 A Yes, um-hmm.

22 Q And have you heard about it in connection with  
23 television news in the evening?

24 A Sometimes, um-hmm.

25 Q And have you made it a point to follow it in the

1 paper?

2 A. Well, I wouldn't say all the way, no, because  
3 sometimes I don't get a chance to read the paper, so --

4 Q. Um-hmm.

5 A. But, what articles that have come out on big  
6 headlines, I would say I have, yes.

7 Q. Um-hmm. Now, your television, I know you are a  
8 real estate salesman and you don't always get to sit home at  
9 night and watch television; isn't that right?

10 A. That's true.

11 Q. So, that's been pretty sketchy as a matter of  
12 fact?

13 A. Yes, it has been very sketchy.

14 Q. Mr. Fuller, bearing in mind that you have been  
15 exposed somewhat to this, if you are selected as a trial juror,  
16 could you be a fair and impartial juror in this case at this  
17 point?

18 A. I believe so, yes.

19 Q. I don't have your sheet in front of me, but  
20 have you been a juror before?

21 A. No, never.

22 Q. Now, if you are selected here, after the  
23 evidence is in, the Judge will instruct you as to what the law  
24 is and you must follow that.

25 A. Um-hmm.

1           Q     Of course, your job is going to be to determine  
2 whether or not the defendant is guilty and all we're looking  
3 for here is if you can follow the Judge's instructions and  
4 return a fair and impartial verdict in this matter regardless  
5 of whatever else you might have heard.

6           A     Right.

7           MR. REMAKLUS: I'd pass the juror for cause,  
8 Your Honor.

9  
10                               VOIR DIRE EXAMINATION

11 BY MR. HOWER:

12           Q     Mr. Fuller, have you heard quite a bit of talk  
13 about this case among your friends and business acquaintances?

14           A     Not too much talk, no. Basically, because  
15 people I've talked to have heard relatively nothing of it that  
16 -- I mean, my people I talk to are outsiders, more or less  
17 in my line of work.

18           Q     Have you ever, in conversation with anybody,  
19 expressed an opinion as to the probable guilt or innocence of  
20 Mr. Creech?

21           A     I would probably say so, yes.

22           Q     What opinion have you expressed?

23           A     From reading what articles that I have that it  
24 appears that the evidence that the party would be guilty. I  
25 mean, that's more or less what I have read and, basically, what

1 I've come up with.

2 MR. HOWER: Challenge for cause, Your Honor.

3 MR. REMAKLUS: Your Honor, if I might be heard for a  
4 moment.

5 THE COURT: If you want to ask some more questions,  
6 go ahead. If you want to take exception to the challenge.

7 MR. REMAKLUS: Yes, I do.

8

9 FURTHER VOIR DIRE EXAMINATION

10 BY MR. REMAKLUS:

11 Q I think the question is here, when you have been  
12 exposed to some information about this whether or not you can  
13 set that aside and return a fair and impartial verdict.

14 Could you do that? That's the gist of the  
15 question.

16 A I think I could, yes.

17 MR. REMAKLUS: We would resist the challenge,  
18 Your Honor.

19 MR. HOWER: I understood the prospective juror to  
20 state quite clearly, Your Honor, that he had formed and  
21 expressed an opinion as to the probable guilt or innocence of  
22 this defendant; based on evidence which he read in the  
23 newspapers.

24 I think the question then, can you form an  
25 opinion based on the evidence you hear in court when he's

1 already said that he's formed an opinion is, in reality, a  
2 pointless question.

3 THE COURT: I think that can be explained. Let me --  
4 you can ask some further questions if you want to.

5 MR. HOWER: No, I don't wish to.

6 THE COURT: Let me ask you first, Mr. Fuller, when you  
7 say you've expressed that opinion, has that been a qualified  
8 opinion based -- if what you read in the paper is true, he's  
9 guilty or has that been simply an unqualified opinion?

10 THE WITNESS: Just an unqualified, Your Honor.

11 THE COURT: What?

12 THE WITNESS: Just an unqualified. It's just -- I  
13 would say I've read, basically from the very beginning. I have  
14 not followed it that close, but from the evidence that was  
15 pointed at the beginning, way last November, that's basically  
16 when my opinion was substantiated at that time.

17 THE COURT: It isn't my desire to imply that you are  
18 not doing this, Mr. Fuller, but I think we all recognize there  
19 is a temptation of jurors that simply don't want to sit on this  
20 case. I don't suppose any juror wants to, but it is a duty and  
21 task although it is a duty, and I think there is a temptation,  
22 perhaps sometimes, for a juror to simply say he has an opinion  
23 because I want to be excused when he says that.

24 To explore that a little more, I'd like you to,  
25 for the record, so making my decision I'll know a little more

1 firmly the basis of this opinion, for you to tell me what facts  
2 you've read and you remember that cause you to have that  
3 opinion and express it.

4 THE WITNESS: Okay. As I recall in the beginning,  
5 when the two bodies were found and, here again just recollecting  
6 off the top of my head, after the vehicle was found and the  
7 parties were walking away from it, that the evidence of the  
8 bodies -- of the bodies of the two dead people and from this,  
9 I mean that's basically been what, right then, you know, I  
10 mean --

11 THE COURT: That's a specific fact. Are there any  
12 other specific ones?

13 THE WITNESS: Not that I can recall, no. That's been,  
14 really, the only one that I have as I can recall right off.

15 THE COURT: You don't feel you've had any particular  
16 -- or have you read anything about alleged crimes in other  
17 states?

18 THE WITNESS: Yeah, I follow that very little, that's  
19 been very sketchy.

20 THE COURT: So, that hasn't --

21 THE WITNESS: No, that hasn't, no.

22 THE COURT: -- played a part in your decision?

23 THE WITNESS: No.

24 THE COURT: You understand, Mr. Fuller, that one of  
25 the important constitutional principles in our system of justice

1 is that the defendant is presumed to be innocent until he's  
2 proved guilty beyond a reasonable doubt?

3 THE WITNESS: That I understand.

4 THE COURT: You understand that?

5 THE WITNESS: Yes, um-hmm.

6 THE COURT: Now, of course, that isn't just a  
7 meaningless phrase, that's an important concept. Do you feel  
8 that you could, in good -- as you sit here today, having  
9 expressed an opinion and the basis which you've expressed it,  
10 do you entertain that definite belief right now that this  
11 defendant is innocent as he sits here?

12 THE WITNESS: Until he's proven guilty, yes,  
13 Your Honor. If the facts were brought to me that he was  
14 either guilty or innocent, then, depending upon the evidence I  
15 would express my opinion.

16 THE COURT: You understand the effect of this  
17 presumption; means he doesn't have to prove anything. He  
18 doesn't have to come in with any evidence of his innocence  
19 because the law says he's innocent.

20 THE WITNESS: Until he's proven guilty, okay.

21 THE COURT: In other words, he doesn't have to prove  
22 a thing. If he were to elect not to take the stand, which is  
23 his right and to just rest on the state of the record, do you  
24 think you could, as you sit here today, say, "All right, he's  
25 innocent" even if he doesn't prove a thing to prove his

1 innocence; or would it take some evidence to remove that?

2 THE WITNESS: It would probably, possibly take some  
3 evidence to remove that, Your Honor.

4 THE COURT: All right, I'm going to grant the  
5 challenge.

6 We appreciate your frankness, Mr. Fuller. We  
7 do have another trial scheduled on June 5th at 10:00 if you  
8 will remember that date.

9 All right, draw another name.

10 THE CLERK: Hazel Yoken.

11 MR. REMAKLUS: Your Honor, I'm concerned about this  
12 particular juror, if she was improperly summoned here or  
13 reported not in response to this call for jurors, I think it  
14 would --

15 THE COURT: That's what we're going to try to find  
16 out when she shows up.

17 MR. REMAKLUS: We'd like to have an independent  
18 finding based on other than her understanding of the legal  
19 process.

20 (Whereupon Hazel Yoken entered the courtroom.)  
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HAZEL YOKEN,  
a prospective juror herein, having been first duly sworn,  
took the stand and testified as follows:

EXAMINATION

BY THE COURT:

Q. Mrs. Yoken, I think you were one of the two  
jurors that we didn't have on the list and we asked who wasn't  
called and you raised your hand as indicated.

Have you been on the jury before?

A. No.

Q. Was this your first -- the first time you've  
appeared?

A. Yes, it is.

Q. Were you served with a summons?

A. Yes, I was and said to be here on the 20th.

Q. You don't happen to have that with you?

A. No, I don't. It's home.

THE COURT: I see; well, we'll just wait a minute,  
I'm checking to see.

(Brief delay.)

1

VOIR DIRE EXAMINATION

2

BY MR. REMAKLUS:

3

4

5

Q Mrs. Yoken, we're going to ask you some questions with regard to your selection as a trial juror in this case and we're going to approach this in two parts.

6

7

8

9

The first part is concerned with pretrial publicity and I have reference to newspaper articles, radio and television broadcasts, or conversations that you may have overheard or in which you may have participated in.

10

11

12

The first questions that we're going to ask you are going to be with reference only to that aspect. Do you understand? You follow me now?

13

A. (No audible response.)

14

15

Q Let me ask you, before we get into this questioning, have you been a juror here before?

16

A. No.

17

Q Is this your first time?

18

A. Yes.

19

20

Q And have you followed this matter, the Creech case in the newspapers, Mrs. Yoken?

21

A. Somewhat.

22

23

Q And have you made it a point to follow the Creech case?

24

A. No.

25

Q If it's in the paper you may or may not read it,

1 is that a fair statement?

2 A. I've read it.

3 Q. Um-hmm. How recently have you seen anything in  
4 the newspapers about this Creech matter?

5 A. I think it was in today's; wasn't it, or  
6 yesterday? I don't know. I don't recall, yesterday I believe  
7 it was in.

8 Q. Now, do you recall what those articles were or  
9 what that article was involved with?

10 A. I think that the trial was to start today, I  
11 believe the article said.

12 Q. And you remember anything else about the  
13 specific article?

14 A. No.

15 Q. You don't remember anything else that was in it;  
16 is that correct?

17 A. No, I don't think so; only that it stated that  
18 the case -- the things that have happened and it was to start  
19 today.

20 Q. And do you remember the things that said that  
21 had happened?

22 A. Well, it was about the two that were killed in  
23 Valley County; that they -- the two bodies they found, yes,  
24 in regards to that.

25 Q. Now, had you been following the -- have you seen

1 any other recent newspaper accounts of this matter, newspaper  
2 stories?

3 A. Yes, we get the paper.

4 Q. Did you see Sunday's paper, Mrs. Yoken?

5 A. I didn't read Sunday's paper, but the rest of it  
6 I did, the rest of it I had.

7 Q. Are you caring for an invalid sister right now?

8 A. Yes, I am.

9 Q. And is your -- are you the only care for her?

10 A. Yes, she's at my house.

11 Q. Is there anyone else that can fulfill -- do you  
12 have to take care of her?

13 A. No, she isn't bed-fast but she can't take care of  
14 herself and I take care of her. She lives at my house with me.

15 Q. She has lived with you for a number of years?

16 A. No, just recently. She just got out of the  
17 hospital, she was in the hospital for over a month and she's  
18 been there with me.

19 MR. REMAKLUS: Your Honor, do you want me to question  
20 her on this at this point?

21 THE COURT: No, I think we should go into it.

22 MR. REMAKLUS: Thank you.

23 THE COURT: It's a serious matter.

24 Q. BY MR. REMAKLUS: How long do you expect to have  
25 her with you?

1 A. From now on. She's going to make her home with  
2 me.

3 Q. Um-hmm.

4 A. She was under Dr. Allen's care and put her in a  
5 nursing home and I thought I could take care of her. He told  
6 me he'd like me to try it.

7 Q. What is your sister's age?

8 A. She's 80, or in the -- 80, I guess.

9 Q. Does Mr. -- I see Mr. Yoken is retired.

10 A. Yes.

11 Q. And are there certain aspects of her care that  
12 he cannot do?

13 A. No, he can't take care of her. He has a heart  
14 condition.

15 Q. Okay.

16 A. And he isn't --

17 Q. And just the three of you there?

18 A. Um-hmm, that's right.

19 MR. REMAKLUS: I believe I'll ask to have then  
20 Mrs. Yoken excused on grounds of hardship here.

21 THE COURT: Will you need to be home every night to  
22 take care of her?

23 THE WITNESS: Yes, I really need to be there.

24 MR. HOWER: I concur with that suggestion, Your Honor.

25 THE COURT: All right, we'll excuse Mrs. Yoken. Since

1 you do have that problem, we're going to have it -- we'll  
2 excuse you from further jury service. You won't have to report  
3 again.

4 THE WITNESS: Thank you.

5 THE COURT: I think we'll take our evening recess at  
6 this time. I'd like to -- I'd like to have all the jurors  
7 brought back in before we release them.

8 MR. REMAKLUS: Your Honor, the jurors -- or the ones  
9 that have not been selected, are over in the American Legion  
10 Hall and I can imagine the terrible things that are going to  
11 befall me if the VFW gets credit for the cooperation and the  
12 use of the American Legion facilities.

13 THE COURT: American Legion?

14 MR. REMAKLUS: Yes.

15 THE COURT: All right, I'll change my --

16 MR. REMAKLUS: Thank you, Your Honor.

17 THE COURT: I understood it was the VFW.

18 (Whereupon the entire jury panel returned to the  
19 courtroom.)

20 THE COURT: I'll advise the entire jury panel that  
21 we still don't have a jury picked and, in fact, we're quite a  
22 ways from it, so it will be -- we'll have to go well into  
23 tomorrow before we'll have a jury picked. So, all of you will  
24 have to return again tomorrow. I would simply like to repeat  
25 the admonition I gave you this morning at the beginning of

1 court that, particularly this evening, that you not -- I know  
2 it's probably a temptation and you can do this and none of us  
3 will know the difference, probably, but I would ask you on your  
4 honor and your conscience to not watch any news broadcasts on  
5 the TV or listen to them on the radio and not to read any  
6 stories in the paper about this trial.

7 I'm sure the news will be full of it tonight  
8 about what's been going on today and the paper will undoubtedly  
9 have one or more stories in the morning and I would simply ask  
10 you, on your honor, not to read those and not to listen to them  
11 this evening or in the morning.

12 Now, I want to take up one other matter that  
13 we're going to face when we get a jury picked.

14 Of course, we will pick 12 members on the  
15 regular panel and, because this is apt to be a protracted  
16 trial, we will pick two alternate jurors.

17 Once we get the jury picked and sworn, we can't  
18 let them go home any more, so, once we get those 14 jurors  
19 some way they are going to have to get their personal  
20 belongings here so they can stay in a hotel, or motel  
21 accommodation.

22 What I need to know, are there any of you that  
23 live so far away that it wouldn't be feasible, say in an hour  
24 or hour and a half, to go home and get your belongings if you  
25 end up as one of the trial jurors? Raise your hands if some

1 of you live too far away to go -- to do that.

2 (No response.)

3 THE COURT: All right, apparently then if we took a  
4 recess of that length you could do that.

5 The only suggestions I would have, I just don't  
6 know who is going to end up on the jury, but, if any of you do  
7 have a problem that would just make it real inconvenient for  
8 you to go home and get your personal belongings that you would  
9 need to stay overnight in a hotel or motel lodging, the only  
10 thing I can suggest is you bring them with you in the morning  
11 when you come back to court in the morning; even though you  
12 don't know whether you'll need them. I would make that  
13 suggestion.

14 Now, is there anyone on the panel that it would  
15 cause quite a hardship if we started at 9:30 in the morning  
16 rather than 10:00? Would this create a problem for anyone?

17 (No response.)

18 THE COURT: All right, we'll take our evening recess,  
19 then, until 9:30 tomorrow morning. If you will remember the  
20 admonition and all report back again tomorrow morning at  
21 9:30.

22 (After the jury panel had left the courtroom the  
23 following proceedings occurred.)

24 THE COURT: Step over here, Mrs. Wikerson, and raise  
25 your right hand and be sworn on voir dire examination.

1 (Whereupon the prospective juror was sworn on  
2 voir dire examination by the Clerk.)

3 THE COURT: Mrs. Wikerson, I would admonish you with  
4 the same admonition I gave the other jurors; don't discuss  
5 the case with any of the other prospective jurors, don't let  
6 anyone approach you and discuss the case with you. If anyone  
7 does, I'd like you to report it immediately to the Court or  
8 one of the Court Officers.

9 I would like you, on your honor, not to listen  
10 to any news broadcasts or TV broadcasts that would be involved  
11 in this trial and what's happening, or read any news stories  
12 about it tonight or in the morning and we're going to start at  
13 9:30 in the morning.

14 MRS. WIKERSON: Nine-thirty in the morning?

15 THE COURT: Yes.

16 MR. REMAKLUS: Your Honor, could we, in order to  
17 expedite the trial and time to schedule our witnesses, I would  
18 like to ask you a question or two as to how we will proceed  
19 tomorrow so that we can go ahead.

20 THE COURT: That's fine.

21 MR. REMAKLUS: Now, as Your Honor is aware from our  
22 remarks to the jury, there probably will be a delay, an hour  
23 or hour and a half, probably at least an hour and a half for  
24 the prospective jurors to go home and get their things. Now,  
25 in view of that, once the jury is instructed and they get their

1 things so they can be sequestered and at that point I assume  
2 that we will go right ahead and, even though it is not during  
3 a noon hour or logical break, that you would want opening  
4 statements and proceed right from then on, is that right,  
5 Your Honor?

6 THE COURT: Yes, that would be my intentions.

7 MR. REMAKLUS: Fine.

8 THE COURT: We'll take whatever recesses is  
9 reasonable depending upon what 14 jurors we end up with in  
10 terms of their needs time-wise to go get their things and if  
11 we don't need an hour, or wouldn't take an hour, we'll give  
12 them what time they need and, then, we'll proceed immediately  
13 after that.

14 MR. HOWER: Yes, I think it might be helpful for  
15 Your Honor, for the Court and Counsel to know that I think it  
16 probable that the defense will use all of its pre-emptories  
17 and I know that means a long, hard day tomorrow, but I think  
18 we will and that means the pace we've been going.

19 THE COURT: Yes, I'm not assuming we'll necessarily  
20 get a jury tomorrow. I don't know.

21 MR. REMAKLUS: Yes.

22 THE COURT: We just have to take that as it comes.

23 MR. HOWER: Right.

24 (Whereupon the proceedings in the matter were  
25 continued.)